Published by the
NATIONAL
MUNICIPAL
LEAGUE
Volume XXI, No. 4
TOTAL NO. 190

NATIONAL MUNICIPAL REVIEW

CONTENTS FOR APRIL

DEPARTMENTS

The contents of the NATIONAL MUNICIPAL REVIEW are indexed in the *International Index to Periodicals*, in *Public Affairs Information Service* and by the *Engineering Index Service*

THE LEAGUE'S BUSINESS

Consolidation of National Municipal League and Proportional Representation League.—On May 1 the Proportional Representation League will move from its present quarters in Philadelphia and will consolidate with the National Municipal League.

The proposal to merge the National Municipal League and Proportional Representation League was initiated at the meeting of the Council of our organization at the Buffalo convention last November. At that time the Council referred the matter to the Executive Committee with power to act. On December 4 the Executive Committee met and approved the details of the merger, but submitted a statement regarding it to all the officers for their opinion. The majority of the officers voted in favor of proceeding with the consolidation. The opinions of the officers were submitted to the executive committee at its meeting on February 19 and the executive committee finally approved the project. Meanwhile the proposal has received the approval of the officers of the Proportional Representation League.

According to the plans of the consolidation, the present staff of the P. R. League, consisting of George H. Hallett, Jr., Walter J. Millard, and Miss Elsie S. Parker, will be added to the staff of the National Municipal League. The P. R. League will retain its letterhead, its corporate existence, and its officers, and will act on its own wherever the promotion of proportional representation can best be carried on independently of the other reforms advocated by the National Municipal League. In addition there will be created a standing committee on proportional representation, representing both organizations, to give advice to the secretary and his staff regarding the comparative emphasis to be placed on proportional representation and the activities to be carried on in that field.

The *Proportional Representation Review* will be discontinued as a separate publication. Instead, a section on proportional representation will be carried regularly in the NATIONAL MUNICIPAL REVIEW. All members of the P. R. League not already members of the National Municipal League will be added to our membership for the rest of the current year; but will be solicited for membership in the combined organization in following years.

By the terms of the agreement approved by both organizations the consolidation can be dissolved at any time by either party upon six months' notice to the other. This action is therefore not conclusive for all time, but is subject to trial and later dissolution if found unsatisfactory. The action is being taken because it is believed that the interests of both organizations will be advanced much more rapidly by a consolidation of finances and staff.

On May 1, when the merger takes place, the headquarters of the combined organization will be moved to 34th Street and Second Avenue in a building formerly occupied by Columbia University as its dental school. The new location will make it possible to have twice as much office space for less than one-half the present rental and will be a measure of considerable economy.

RUSSELL FORBES, *Secretary.*

Editorial Comment

April

NATIONAL MUNICIPAL REVIEW

Vol. XXI, No. 4 Total No. 190

The Dallas recall election which was reported last month in this department was held by the courts to be contrary to the charter in that the petitions sought to remove the whole council by blanket recall. A second group of petitions seeking to recall individual councilmen was submitted but found to contain only one-half the required number of valid signatures. There is, therefore, no immediate prospect of a recall election.

*

St. Paul's salary index has not been wrecked, after all, on the rock of falling prices, as was intimated in this department in the February issue. The earlier decision to suspend the operation of automatic decreases on January 1, in pursuance to the falling price index, has been reconsidered. According to newspaper reports, the system was to be resumed as of March 15. It was estimated that the action would reduce salaries this year approximately $120,000.

*

Administrative Reorganization in the Federal Government

Pursuant to President's Hoover's recommendations, a resolution has been introduced into the House of Representatives granting to the President power for one year to effect reorganizations in the administrative branch of the government. Any new division which the President might create could not have more than 80 per cent of the number of employees or pay more than 80 per cent of the combined salaries of the abolished unit. Another measure introduced to the same effect allows the President two years to complete the reorganization. Still another bill would create a reorganization board, comprised of two senators, two representatives and a fifth member appointed by the President. The findings of the board would be reported to the President who could, on the board's recommendation, transfer the whole or any part of a bureau or branch from one department to another or consolidate, as may be deemed necessary.

In this connection it may be noted that the President's recommendations relating to the civil service commission bear close resemblance to the personnel provisions of the forthcoming revision of the League's *Model Charter*. What Mr. Hoover has recommended is a director of personnel with a commission acting in an advisory capacity. The revised *Model Charter* will provide a director of personnel as the executive officer of the department and head of the personnel board. The functions of the personnel board, however, will be

confined to the approval or disapproval of rules recommended by the director, and to the hearing of appeals with the power of advisory opinions only.

*

Excessive Cost of Land Condemnation

New York City is paying far more than the fair value for land condemned under eminent domain, reports Leonard M. Wallstein, special assistant corporation counsel. In 371 condemnation proceedings from 1926 to 1930 the owners claimed a total value in excess of $203,000,000. The city's real estate experts valued the land at $107,000,000 and the supreme court awards aggregated $157,000,000, including interest in some cases. On the average, the city paid 67 per cent more than the assessed valuation of the land it took. In the four years studied it also paid fees to its own real estate experts totaling almost $2,000,000. Their services are described by Mr. Wallstein as "obviously futile in view of the supreme court's practice of basing awards on figures midway between valuations claimed by the city and those claimed by owners whose land was condemned."

Existing methods carry an unpleasant political flavor also, declares Mr. Wallstein. Unsaleable land has been unloaded on the city at fancy prices for the profit of politicians and other insiders. Organized groups of speculators have reaped large profits by buying property shortly before the public announcement of its selection by official agencies. There has been collusion between public employees and private interests. Dummy operators commonly serve as puppets for undisclosed principles.

*

Municipal Ownership and Respect for Private Property

Government ownership of municipal electric plants is contagious, writes Francis X. Welch in *Public Utilities Fortnightly* under the caption, Is the Municipal Plant a Social Phenomenon? By a spot map of municipal plants he reveals that the natural soil of municipal ownership in this country is the Pacific Coast and the Middle West. This is because the residents of these areas are less individualistic and less respectful of private property than the rest of the country. This in turn is because the municipal ownership regions were settled principally by free grants of land from the national government or by sales at moderate prices. The present owners, therefore, have small respect for the value of real property and place a correspondingly heavier emphasis upon human or social rights. The landowner on the Pacific Coast or in the Middle West is annoyed to see public utility corporations making money while he can bearly make ends meet, believes Mr. Welch. If utility companies recognize that government ownership cannot survive in soil unadapted to it they will be nearer the solution of the problem of how to prepare an adverse soil.

There is certainly a suggestion here for the public relations counsels of utility concerns. If they adopt it we shall be subjected to a vast educational campaign to inculcate greater respect for property rights in general. But who can say whether the property concept of a Virginia farmer is sounder than that of his agricultural brother in Kansas or Nebraska (assuming they are different) simply because it arose earlier in our national history? And do our homestead laws really explain sentiment for municipal ownership? Pioneers moved West in order to enjoy the blessings of private property which the economic system as developed on the Atlantic Coast denied them. "Interesting if true" is the correct reply to Mr. Welch.

Constructive Proposals for Local Government Reorganization in New York

The Institute of Public Administration has submitted a memorandun on the reorganization of New York local government to Governor Roosevelt which he has made the subject of a special message to the legislature and a radio address to the public. Pointing out the confusion in local government today, one evidence being the 11,000 tax collectors for the towns, villages and school districts of the state, who in the language of Philip Cornick (apparently designed to go down in history with "Lafayette, we are here") form a greater army than that which won the battle of Marathon, the Institute calls for an official commission to canvass the possibilities of reform.

The memorandum, to which the Governor is careful not to give unqualified approval, describes the consequences of an outgrown system of local government. One which is emphasized is the undue growth of state supervision and state aid. State supervision, believes the Institute, tends to develop red tape and bureaucracy by confusing responsibility and is a dangerous palliative for the failure properly to coördinate work and resources. (Undoubtedly, there is danger in this direction although we have not observed that anyone has yet immunized state government against the dreaded bureaucracy bacillus.) Certain proposals are suggested for consideration, one of the most interesting being the absorption of sparsely settled rural areas into a state reserve which the state would administer directly and exclusively. For other rural and semi-urban regions the Institute suggests the transfer of certain county functions to the state and the establishment of state administrative areas for the administration of the transferred services.

Recommendations for the readjustment of city-county-village relationships follow a principle which has recently come to the front, notably in the report of the New Jersey Tax Survey Commission. Under this scheme cities and villages of less than 25,000 population are to be made limited municipal corporations and to suffer the transfer of such activities as police, health, welfare, assessment, and tax collection to the county government. Cities between 25,000 and 100,000 are to be empowered, with the approval of the voters and with the consent of the county government, to transfer such activities to the county. Cities of over 100,000 population are to be established as "free cities" wholly independent of the county.

Although the Governor has expressly withheld his endorsement, he hopes that the memorandum will stimulate discussion and understanding of the problems of which it treats. But even with such limited executive support the straightforward character of the document will undoubtedly serve materially to accelerate the already overdue remodeling of the local government structure of the state.

*

Vacant Land in Suburban Areas

A sensational appreciation of real estate values in Cook County, Illinois, and the subsequent violent deflation, have left assessments in a confused state, report Herbert D. Simpson and John E. Burton of the Institute of Economic Research of Northwestern University in their recent study, *The Valuation of Vacant Land in Suburban Areas—Chicago Area.* But, although the report is primarily designed to assist the tax assessor to a fair valuation of the land, certain significant facts revealed have an implication beyond the mere technique of assessment.

A most surprising situation with respect to land utilization, with a distinct bearing upon the food supply of Chicago, has been uncovered. In Cook County alone there are 331,000 acres of vacant land. Of this 240,361 acres are unsubdivided and devoted generally to agriculture; but there are also 335,260 vacant lots. In the county as a whole 50 per cent of the total area has been subdivided but less than 55 per cent of the subdivided portions has actually been improved. Even within Chicago 30 per cent of the lots are still vacant; outside the city 69 per cent of the subdivided area is vacant. This, in the words of the authors, means that thousands of acres of the finest agricultural land all over the county have been taken out of agricultural production and assigned to idleness for decades to come.

Cook County, declare the authors, measured in value of products, remains one of the most important agricultural counties of the state; but its agricultural resources have suffered severely from the subdivision craze. Today there are districts in the county in which the population will have to increase at more than twice the rate estimated by the Regional Planning Association in order to absorb present subdivisions by the year 1960.

The present depression re-directs attention to the possibilities of linking small scale agriculture with industrial employment as a means of economic stability and an improved way of life, as well as an avoidance of the great social waste created by withdrawing land from its natural utilization. Of course, the problem is not peculiar to Chicago. It suggests, however, that we shall eventually reach a point where subdivisions will be treated as a business affected with a public interest requiring official certificates of convenience and necessity before they can be undertaken. Apparently "rugged individualism" faces attack on another front. The logic of city planning leads irresistibly to this conclusion.

Assessment policies, likewise not peculiar to Cook County, stimulated uneconomic speculative subdivisions. In the period of prosperity following the 1921 depression, the appraisals of local neighborhood assessors were made at moderate values on a roughly agricultural basis. The result was a virtual subsidy to the subdivision of lands within the urban influence. Some years later, however, when values had ceased to advance and when local governments were pressed for revenue, the whole county was assessed largely on the assumption that it was all suburban land ripe for subdivision. Again the consequence was to penalize agriculture by encouraging wasteful withdrawals from agricultural uses.

Undoubtedly, the rapid development of city planning ideas during the last decade is merely a foreshadowing of what the concept will in time comprehend. Only a prophetic vision would disclose the degree of social control over land utilization which future years will see. Undoubtedly, it will be far beyond anything we now know. And in this development the tillage possibilities (involving wide social implications and a new manner of living) of land areas on the peripheries of great cities will be considered. Such land has elements of value other than to afford mere standing room for office and industrial workers.

HEADLINES

"FREE public spending is nearing the rope's end," shouts Felix M. McWhirter, chairman of the Committee on State and Local Taxation and Expenditure of the United States Chamber of Commerce from the front page of the *Public Dollar*. He points out that local chambers of commerce are furnishing "seasoned business leadership" to governments in this financial crisis. Having failed to keep business running satisfactorily, these "seasoned leaders" now turn to government. Hold everything!

* * *

Fortunately for the future of the country, the division of simplified practice of the United States bureau of standards finds time to announce the acceptance by industry of the reduction in the number of types of wheel-barrows manufactured from 41 to 27.

* * *

Seven counties are enough for the state of Washington in the opinion of S. J. Collin, a member of the Spokane board of county commissioners, who has picked as the seven county seats Spokane, Walla Walla, Wenatchee, Yakima, Seattle, Olympia and Kelso. The stumbling block to any scheme of county consolidation anywhere is found in the ironical comment of the Aberdeen *World*, "It is rather an intriguing thought, the spontaneous approval that might be expected from Tacoma and Pierce County for a county seat at Seattle."

* * *

Nevertheless abolition of 19 of the 82 counties in Mississippi by a series of consolidations was recommended by the Mississippi Research Commission in its report to the legislature which created it.

* * *

The key to improvement in the government of New York City was thrown away by the state legislature when it adjourned without passing the Hofstadter bill which would have permitted a petition signed by 15 per cent of the registered voters (a maximum of 30,000 being required) to force the calling of an election to decide whether a new charter should be drafted. The fault is not all Tammany's —the Republican machines in up state cities feared trouble in their own bailiwicks. When it comes to the momentous issue of good government, Republican and Democratic parties stand side by side to defeat any such catastrophe!

County government is at the head of a long list of problems of democracy to be solved these days. With commissions in California, Michigan, Montana, North Carolina, and Virginia studying or having studied how the efficiency of this sphere of government can be improved, Governor Woodring of Kansas announces the probable appointment of such a commission in his state and Governor Winant of New Hampshire has just appointed one.

* * *

And Governor Roosevelt of New York, taking time from his pursuit of the Democratic nomination long enough to send a bristling message to the legislature recommending the modernization of antiquated town and county governmental units, called county government "no more fit for its purpose than an ox-cart would be fit for the task of supplying modern transportation between New York and Chicago."

* * *

Then there is Virginia—the complete legislative program of improvement of county government recommended by the Virginia Commission on County Government of which Dean Robert H. Tucker of Washington and Lee University is chairman, has been enacted into law by the legislature. Among the bills was one setting up optional forms of county government, including the manager plan. The legislature took a leaf from North Carolina's experience by passing over to the state complete responsibility for highways.

* * *

Under the compelling title "budgeting for a deficit," the Toronto Bureau of Municipal Research lists several methods of doing just that. Among them are: By pretending that not as much will be spent as it is really intended or expected to spend; by pretending that more revenue will be received than is really expected to be received; and by combining the two previous methods. This game of "pretend" is not confined to Toronto or Canada.

* * *

New Hampshire unemployed who receive municipal aid lose their right to vote. This is the interesting opinion of Assistant Attorney-General Lorimer, interpreting the state law denying the right to vote to paupers and persons excused from paying taxes.

* * *

Complete reorganization of the Cook County tax machinery is provided in an act which has been signed by the governor of Illinois. Under its terms the board of assessors, board of review, and about 30 rural township assessors in the county are replaced by a single county assessor with deputies and two reviewers, to be appointed by the governor and the chairman of the Cook County board.

HOWARD P. JONES.

Thoughts on Tax Delinquency

PAINLESS reduction of tax delinquencies with tax remission in deserving cases

BY W. EARL WELLER — *Rochester Bureau of Municipal Research*

DELINQUENT taxes have caused more worry and have received less constructive thought than most problems of municipal administration. Year after year cities have seen the totals of outstanding taxes increase in graduated proportions regardless of general economic conditions. Year after year the same cities have added an item for "unpaid taxes" to their budgets, thus passing the load of delinquency along to the "good" taxpayers who are too ignorant of municipal finance to realize what is really happening. Year after year little comedies entitled "tax sales" have been enacted in these cities. While the details of these comedies differ in different cities, the good but dumb taxpayer always plays the part of *capra hircus*, in less erudite company—the goat.

It is not the object of this paper to enlarge on the theme just suggested. Rather it has the modest task of indicating a solution, a method of improving the administration of delinquent tax collection. An uncompleted study of delinquency—fiscal, not moral—in Rochester, seems to indicate that that city might avoid about half the delinquent items on its tax rolls by mailing tax bills and by properly investigating the financial aspect of proposed local improvements.

MAKING IT HARD TO PAY TAX BILLS

In Rochester they make it as difficult as possible for a taxpayer to pay his bill. In order to meet his obligations to a grateful city he may pursue one of two methods. He may go to the treasurer's office, locate a clerk that has his particular locality in charge, wait while the said clerk prepares a proper bill, and then trot up to a cage for the major operation. Rather like asking to be struck by lightning. If he does not desire to waste the time involved in the method described, he may go to a fire station or a public library and get a tax bill request blank. If he completes this form and mails it with a self-addressed and stamped envelope to the city treasurer, he will receive his bill through the mail. These methods are even more aggravating than they sound, and, particularly in the case of the smaller tax bills, encourage taxpayers to join the ranks of the delinquent.

The study previously referred to shows that, while 17 per cent of the items on the Rochester rolls for 1928 were for amounts less than fifty dollars, 51 per cent of the items on the delinquent list were in the same bracket. Probably many, if not most, of these items would never have reached the delinquent list if the city

had followed the lead of private business, small and large, and mailed bills. Preliminary suggestion one, then, is mail your tax bills. Many cities are already doing this. All cities should be doing it.

WEIGH LOCAL IMPROVEMENTS MORE CAREFULLY

Failure to make proper financial investigations of local improvements before undertaking the work involved is a second avoidable reason for tax delinquency. The public works department is given ample time to study the engineering problems involved in a local improvement, but usually the first notice the department of finance receives of the proposed improvement is the certificate of completion. Before any such improvements are ordered the department of finance should determine what the prospective yield of the special tax will be. Rarely, if ever, will the yield equal the cost of the improvement, the difference being met, either directly or indirectly by the city at large—directly by contributing a percentage of the cost, indirectly by acquiring some useless real estate through tax foreclosures. No one can plaster a six hundred dollar assessment on a two hundred dollar lot and make the blamed thing stick. The Rochester study has not progressed far enough to estimate what percentage of the city's delinquency could be avoided by a preliminary financial investigation of local assessment projects, but the percentage is considerable from all indications.

The foregoing suggestions are not strictly within the scope of this paper since they do not involve the administration of delinquent tax collection. Here the improver of conditions should be in his glory since there is scarcely anything that he can do that will not be an improvement.

SOCIAL JUDGMENTS ON DELINQUENTS

No one has yet admitted that delinquent taxes are a social as well as a financial matter, although the fact has been tacitly accepted by officials. This is proven by the tendency towards weak enforcement of legal provisions. Many officials have unwittingly constituted themselves judges and, following the trend of the law, have decided that mercy to the delinquent taxpayer transcends justice to the taxpaying public. If this hypothesis were to receive the sanction of law the social factors might be intrusted to employees better fitted to pass judgment. A general suggestion, then, for improving the administration of delinquent tax collection is to give legal sanction to the social aspects of the question.

How? The plan is yet only in sketchiest outline. Taxes become delinquent in Rochester if unpaid, at the end of the calendar year in which they were first due. For a year such unpaid taxes are held in the city treasurer's office, no effort of any sort being made to collect them. During that year trained investigators should examine and report on each case. These investigators would uncover many social conditions that would justify the remission of the tax in question. In such cases, on the application of the delinquent owner and with the approval of the city treasurer—this approval being based on the report of an investigator—the city council could and should remit the tax. In order to avoid abuses the law should provide that the tax on any certain taxable parcel could only be remitted two or three times while held by one owner and that no property on which taxes had been remitted could be transferred without the city's consent.

The plan is crude as yet. It has been scoffed at and will probably come

in for more scoffing. Much more difficult legislation has been written and enacted. Much more difficult administrative problems have been solved. It seems that the plan merely accepts a basic truth as a truth and attempts to adjust procedure to reality.

COLLECT FROM THOSE WHO CAN PAY

In order to avoid the cynical thought that this is the idea of a sentimentalist, let us hurry to the obvious corollary. Having accepted, under proper safeguards, the social implications, the city can afford to be a bit "hard boiled" with the taxpayers who can but do not pay. Penalties for non-payment should be made very severe and the law should be made simple and direct. Delinquent taxpayers able to meet their obligations deserve no consideration at the hands of the body politic. With severe penalties and a simple legal procedure the enforcing officials should be required to have each tax levy closed not later than twenty-four months after the taxes involved were first due.

For a few years yet the plan suggested will be considered revolutionary. Then for a few more years it will be considered evolutionary. And then it will be accepted. In the meanwhile what is to be done in a matter that needs immediate attention? Laws differ so, not only between states but even within states, that it is impossible to do anything but generalize. In Rochester much of our trouble would vanish if we were, under home rule authority, to make a few minor changes in our law and then to enforce the law. A few years ago Rochester enforced a tax lien that had been accumulating since 1874. Such instances do not help to any extent.

The matter of delinquent taxes offers so many interesting phases for study that such a paper as this might suggest debatable topics for a session that would substitute days for the minutes at our disposal. With this thought in mind a wordy introduction was avoided, all elaboration of the central thesis was shunned and this conclusion will now be made as abruptly as is consistent good manners.

Norfolk's Municipal Prison Farm

NORFOLK is permitting offenders to pay their debt to society by useful work; the prison farm a financial as well as a sociological success

BY GLEN LEET AND JOHN McLAUGHLIN *Norfolk, Virginia*

IS IT necessary that the detention and care of those who fail to abide by the laws of society be a financial burden upon the taxpayers of a city? Does the general method, so commonly employed by municipalities of seeking to reclaim, reform, and generally prepare law breakers to return to a useful place in society by confining them in idleness with other criminals, represent the most humane, practical and enlightened plan possible? Cannot those who are guilty of offenses against society work out that debt by useful service which would be advantageous both to themselves and to the community?

These are some of the problems which the city manager has been trying to solve at Norfolk by a process of scientific experimentation at the General Booth Municipal Prison Farm.

From a practical standpoint, it was clear that the present jail was inadequate to provide quarters in proportion to the number and character of prisoners committed there. To have modernized it, especially with respect to segregating the various classes of criminals, would have entailed the expenditure of approximately $53,000, which would not have provided for enlarging the facilities. Aside from this economic consideration, the foundation of a regenerative agency whereby the energies of those confined in penal institutions might be utilized to some useful purpose for the public good and directed in a manner to promote good health and morals was in line with the progressive character of the city's welfare program.

THE GENERAL BOOTH FARM ESTABLISHED

Consequently, on August 20, 1929, pursuant to the city manager's recommendation, council authorized the establishment of the farm at the welfare center in Princess Anne County where are located the Municipal Hospital for the care of the indigent sick and the John Smith Tubercular Pavilion. It began operating December 29, 1929.

The prison farm comprises approximately two hundred acres of farm land located about six miles outside the city limits. The total cost of constructing and completely equipping the plant amounted to $21,349.13. It is composed of the following buildings:

Office and waiting room.

Dormitory (three sections, one white and two colored, the former being separated from the latter by a six-foot passageway; toilet and showers provided for each race).

Dining hall (two rooms and kitchen).

Storeroom.
Work shop.
Cell room.
Garage.
Dairy.
Barn or stable for horses.
Barn or stable for cows.

One hundred prisoners can be incarcerated at the farm; 95 per cent are committed for violations of state laws. The commonwealth contributes to the support of state offenders according to the number imprisoned, the schedule ranging from 25 cents for each prisoner in excess of fifty; 50 cents for each prisoner in excess of twenty-five, up to and including fifty; 60 cents where there are ten or more, up to and including twenty-five; 75 cents where there are as many as three and less than ten, and $1.00 for one prisoner only.

For the purpose of accounting, a record of the time served by each prisoner is maintained, and from this compilation the number of prisoner days is determined. For instance, ten prisoners serving a sentence of thirty days represent three hundred prisoner days. During 1930 state prisoner days totaled 13,829, the city prisoner days numbered 783. On the basis of the first figure, the municipality received $7,758.65 from the state of Virginia, or 53 cents per prisoner day. Deducting this credit from the gross operating cost, including depreciation, of $19,436.57 the net cost of operating the farm, without considering the value of services rendered municipal departments, is seen to amount to $7,758.65 or 80 cents per prisoner day.

PRISONERS WORK FOR THE CITY

In addition to their duties on the farm and in the dairy and kitchen, during the last half of the year, when they could be released from the work attending the establishment of the plant, the prisoners were assigned tasks throughout the city in connection with the cleanup program, ditching and grading dirt streets, and maintenance work on the golf courses and in the cemeteries. Dairy products and produce were furnished the several municipal hospitals. As attention was directed principally to a program of construction and organization, during much of 1930 no systematic record of the supplies furnished the city institutions was kept. However, it appears that during the latter part of the year the General Booth Farm dispensed in this manner approximately 3,493 gallons of milk, 17,483 pounds of Irish potatoes, 6,085 pounds of sweet potatoes, 1,587 pounds of cabbage, 92 pounds of carrots, 80 quarts of butter beans, 444 bunches of beets, and 3½ bushels of tomatoes.

In the absence of a complete system of accounting during this experimental stage, the General Booth Farm received no credit for the services mentioned above, nor were the departments interested charged for the same. However, a record of such services was kept, and although the charges shown were arbitrarily arrived at, the following items will serve as an indication of the productiveness of the farm.

Labor (basis, $1.40 per diem)	$8,019.20
Guards as foremen (basis, $3.34 per diem)	2,047.42
Produce and dairy products (basis, city contract prices)	2,141.02
	$12,207.64

FARM SELF-SUSTAINING

It will be noted that the value of prison labor has been appraised on the basis of $1.40 per day. This is one-half of the per diem cost to the departments of outside labor. So far as it has been possible to ascertain from supervisory officers in the various

departments prison labor is approximately 75 per cent as efficient as standard labor. It would appear, therefore, that $2.10 might fairly be used as a basis for determining the value of prison labor. However, an accurate appraisal is possible only after an extended period of observation and a comparison of the results accomplished by this class of labor and hired labor has been made, and for this reason the schedule shown has been employed. The monthly compensation for guards has been used in determining the cost of supervision.

Value of services and products		$12,207.64
Gross operating cost	$16,993.36	
Depreciation	2,443.21	
Total operating	$19,436.57	
Less aid from board state prisoners	7,758.65	
Net cost	$11,677.92	$11,677.92
Difference		$529.72

It is obvious from the foregoing statement that the General Booth Farm was not only self-sustaining during its first year of operation, but that the productiveness of the facility exceeded the cost of operation. Assuming that the estimate of the services rendered municipal departments is a fair appraisal, it appears that the plant produced over and above all operating expense on the basis of $.03 per prisoner day. In this connection it should be remembered that the summary of services rendered covers only the latter half of the year.

It will perhaps be of some interest to sketch the daily routine observed at the farm, and this may be summarized as follows: The men arise at 5.30 A. M. and breakfast at 6.00 o'clock. From 7 until noon, which is the dinner period, and from 12.30 until 5 they are engaged in the various tasks assigned them. Six o'clock is the supper hour and from 6.30 until 9 o'clock they are permitted recreation. The lights are out at the last mentioned hour and the men are required to retire. Only minor duties are performed on the Sabbath, such as work in the kitchen, and religious services are conducted every Sunday afternoon. Relatives are permitted to visit the prisoners on this day.

The city furnishes inconspicuous clothing and the usual garb consists of whipcord coat and trousers, jumper sweater, gray socks and heavy brogue shoes. Boots, and of course overalls, are also provided.

Norfolk's brief experience does not permit of a conclusive answer to the two questions which naturally present themselves in reporting on an activity of this character. Does the prison farm solve the problem of punishment? and, Do prisoners become better citizens?

However, there can be no question that the prison farm offers an aid to the prisoner to cultivate industrious habits, and it is apparent that with but a few exceptions they are amenable to discipline, cheerful in their work, and respectful to those in authority. We are convinced that the average prisoner prefers to work out his debt to society in this manner rather than by confinement in jail. It has been established that the detention of those who violate the laws of society need not be a burden on the taxpayers of a municipality.

In conclusion, may we say that in our opinion, the establishment of a municipal prison farm at Norfolk, during its first year of operation, has been successful both from a practical and humanitarian standpoint?

The Fate of the Pinchot Relief Program

GOVERNOR PINCHOT'S proposal to spend $120,000,000 in unemployment relief fails in the legislature. Less than $14,000,000 will be directly or indirectly available

BY H. F. ALDERFER *Pennsylvania State College*

GOVERNOR PINCHOT convened the General Assembly of Pennsylvania in extraordinary session on November 9, 1931, and submitted in his proclamation a nineteen-point program for legislation concerning unemployment relief. Emphasizing the "right to work" and stressing the duty of the Commonwealth to take care of its unemployed in his message to the legislature, he proposed a comprehensive plan that would utilize every available agency of state and local government in making provision for the 900,000 workers, about one-quarter of the total number, who were, according to administrative estimates, out of work.

The administration bills introduced in the legislature, if passed, would have made possible an outlay of about $120,000,000 for this purpose. After a seven weeks' session, marked by an ever-widening rift between the executive and the assembly, the session was adjourned. The governor's program was completely discarded and in its place the legislators substituted one of their own, which provides, making due allowance for gubernatorial vetoes somewhat more than $13,000,000 for direct and indirect relief without raising additional state taxes.

The special session brought out in bold relief many conflicts latent in the Pennsylvania situation. Between Governor Pinchot and the Republican state organization, it was war to the bitter end. Even the house of representatives, so safely for Pinchot during the regular session of 1931, refused him support for his program.

GOVERNOR PINCHOT'S PROGRAM

Both work-relief and direct relief were contemplated in the administration plan for unemployment relief. State appropriations were to be used only for work-relief, veterans' relief and hospital services, the greater share to be utilized to provide employment by expanding the activities of existing state agencies. The department of highways was to have undertaken work on roads, at present financed by local units, with the revenues accruing from the emergency gasoline tax. This was estimated at $30,000,000.[1]

An emergency appropriation of $10,000,000 was to be given to the governor, who, with the auditor general and the treasurer, were to allocate it to provide

[1] Figures relating to administrative relief program which are not found in the Governor's Proclamation, his message to the legislature or the administration bills introduced in the legislature are taken from *Legislative Bulletin No. 157*, Pennsylvania State Chamber of Commerce, Harrisburg, Pa. (November 21, 1931).

employment. Appropriations to the departments of forests and waters, health, military affairs, labor and industry, property and supplies, revenue and welfare, totalling $4,482,000, were provided in the program for clearing lands, building roads, studying health conditions, aiding veterans, improving the military reservation, establishing employment exchanges, increasing the personnel, administering the new tax laws, and aiding both state-aided and state-owned hospitals. These items, together with appropriations for the unemployment commission, the bituminous coal commission and the special sessions expenses, brought the total of state appropriations requested of the special session to $45,365,974. Besides this, the balance of a $1,500,000 appropriation for the Pymatuning Dam project in Crawford County was to be made available for building railroads and preparing the site.

The necessary funds for this work were to be raised by three taxes: an emergency tax of two cents a gallon on gasoline, bringing the total to five cents; a tax of one cent on every ten cigarettes, plus an annual five dollar permit fee to dealers not holding a mercantile license; and a tax on outdoor advertising, consisting of a one hundred dollar fee for a permit to do business, and an annual excise tax of three cents per square foot of billboard surface used. The gasoline emergency tax was to be in force for a period of two years, but the others had no time limit set for their duration. The total yield of these taxes was estimated at $46,500,000; gasoline to bring in $35,000,000, cigarettes $10,000,000 and the billboard tax $1,500,000 for the two-year period.

INDIRECT DIRECT RELIEF

The most unique feature of the Pinchot plan was the project by which direct relief, that is, fuel, clothing, food and shelter, as well as work-relief could be furnished through the medium of the state government without interference from the constitutional restriction inhibiting appropriations for direct relief. A commission on unemployment relief, consisting of four unsalaried members appointed by the governor, and of the state treasurer, was to be created and authorized to receive contributions of money and other personal property. These were to be used to provide the needy with work or direct relief as the commission deemed advisable, subject only to the governor's approval and to the restriction that there should be no cash "doles." The commission would issue receipts for these contributions, which would be redeemable at face value, at 4 per cent interest, if a constitutional amendment, also introduced at the session, authorizing the governor, auditor general and state treasurer to issue "Prosperity Bonds" to repay these contributions, were passed. The process of amending the constitution of Pennsylvania requires favorable action by two successive legislatures and a majority of electors of the state voting at a state election. Ordinarily, final action on this measure would have come in November, 1933, and until then, contributors would not have known whether they would be repaid. No limit was set to the amount to be received in this manner, but the governor set $35,000,000 as the necessary goal.

These "Prosperity Bonds" were also expected to repay to local units one-half of the amount of temporary loans made in 1932 provided for in a bill setting the limit of these loans at 60 per cent of the amount of delinquent and uncollected taxes for 1930 and prior years at the date of the loan. Money so raised was to be used only for un-

employment relief, and in school districts only for the payment of teachers' and other employees' salaries, and expenditures of these sums were to be approved by the commission on unemployment. These local loans were expected to total $35,000,000, one-half of which added to estimated contributions to the state fund would necessitate a "Prosperity Bond" issue of $52,500,000 in 1933.

Two other bills, sponsored by the administration, and affecting political subdivisions, were introduced. One authorized the county treasurer, with the consent of the county commissioners and a judge of the district court, to postpone the sale of seated lands for delinquent taxes for periods not exceeding one year during times of depression. The other gave all political subdivisions, excepting school districts, the power to levy an extra ten mills for unemployment relief in times of prolonged economic depression. Another constitutional amendment, empowering the general assembly to authorize debt not exceeding $20,000,000 to relieve distress occasioned by disaster, epidemic, disease or prolonged economic distress after approval by a majority of electors voting on the question at a state election, was introduced.

The characteristics of the Pinchot program, aside from its magnitude and comprehensiveness, are the increased centralization of state activity in the hands of the governor and the continued invasion of the state into local fields. These added fuel to the fire of the administration opponents.

CONSTITUTIONAL QUESTIONS INVOLVED

Two interesting constitutional questions came up for consideration in the special session. The first was the scope of legislative power. Opinion was divided on the interpretation of Article III, Section 25 of the Pennsylvania constitution, which states that when the general assembly is in special session, "there shall be no legislation upon subjects other than those designated in the proclamation of the Governor calling such session."

Attorney General Schnader ruled that the administration bills were constitutionally before the legislature and that constitutional amendments might be proposed at a special session, although their subject matter had not been included in the call. The majority of non-administration bills, he ruled, were not within the scope of the proclamation.

Dissatisfied with the attorney general's opinion, the house requested a brief from John H. Fertig, director of the legislative reference bureau. Arriving at a somewhat broader interpretation, Mr. Fertig concluded that the general assembly might legislate freely within the general subject of the governor's proclamation without adhering strictly to the 19 separate subjects named therein. In line with this opinion the legislators proceeded to interpret the proclamation of the governor for themselves.

The second constitutional question concerned Article III, Section 18 of the constitution, which reads as follows:

> No appropriations, except for pensions or gratuities for military services, shall be made for charitable, educational or benevolent purposes, to any person or community, nor to any denominational or sectarian institution, corporation or association.

The attorney general's opinion to the governor was to the effect that no appropriations of state money could be made for direct relief of the unemployed, and that no appropriations for such purpose could be made to a state agency, to political subdivisions, or to welfare agencies incorporated or unincorporated. In his opinion on the

non-administration Talbot bill, making an appropriation of $10,000,000 "under the police power" to the department of welfare for state-aid to political subdivisions charged by law with the care of the poor, and allowing them to use the money for direct relief, he concluded that the bill would be unconstitutional, if for no other reason than that the legislature could not, by mere recital that it is exercising the police power, wipe out a constitutional provision and thus, in effect, amend the constitution.

The legislative reference bureau brief on the same subject concluded that the care and maintenance of the poor as a whole class was a governmental duty within the scope of the police power. The Talbot bill was enacted by the legislature, allowed to become a law by the governor without his signature, and on February 15, 1932, was held constitutional by the Dauphin County Court. It is expected that the supreme court will make final determination on the validity of the bill at an early date upon the filing of an appeal by the attorney general.

PUBLIC OPINION ON THE GOVERNOR'S PROGRAM

In spite of the recognized need for unemployment relief, Governor Pinchot's program was not received with enthusiasm by the rank and file of the citizenry of Pennsylvania. Most of the opinion expressed outside of governmental circles was sponsored or influenced by organized groups. A survey of newspapers throughout the state and of official pronouncements of and letters from many state and local organizations reveals the cold reception it received in many quarters. Labor was most conspicuous in favor of the plan.

The main stimuli to the opposition forces were the gasoline, cigarette, and local general property tax features of the proposal. It was declared repeatedly that the "little man" would be hit hardest by these taxes, and that his burden was already more than comfortably heavy.

There was much sentiment in favor of a state income tax law. Governor Pinchot himself indicated in his message to the legislature that he might have included such a proposal but for the ensuing litigation which would prevent realizing funds for the coming winter. The proposed taxes were also opposed on the grounds that they would drive business out of the state, that their collection would be costly, and that the estimated revenue was greatly exaggerated.

Other features were criticized. The new state commission on unemployment was ridiculed as another expensive state experiment, the governor was scored for his refusal to allow local subdivisions to allocate expenditures from state funds for unemployment relief, it was stated that contributions to the state fund would not come up to administrative expectations as local charities had made serious drains upon those able to contribute. Legislative criticism of the chief executive included the charge that he was too wilful, that he would not compromise reasonably, that he had visions of the White House, that he desired to aid his road program more than the unemployed, and that if he desired economy, as he had frequently indicated, he should start by pruning state employees' salaries.

RESULTS

Of the 126 bills introduced in the special session, 22 were passed by the general assembly. Six of these were originally administration bills, not one of them constituting a major feature of the Pinchot program. They included enactments postponing delinquent tax

sales, re-apportioning the balance of the $1,500,000 Pymatuning reservoir project appropriation, and appropriations totalling $3,296,553.04 to the departments of military affairs, welfare, property and supplies and other state agencies for aid to hospitals and veterans; supplies and legislative expenses. Added to this is an advance of aid to certain school districts through the department of public instruction of $2,000,000, which must be paid back or deducted from the regular school subsidies before the present biennium ends.

The non-administration measures passed included the Talbot $10,000,000 direct relief bill, the two Trainer bills authorizing Philadelphia to extend the time for payment of the two $3,000,000 emergency loans until 1934, the three Bechtel bills limiting the penalty for delinquent taxpayers to 6 per cent of the total amount for a period of two years, a bill allowing poor districts with the approval of the common pleas court to make temporary loans for one year, one providing for the construction of a dam at the Torrence State Hospital with funds already appropriated, and appropriations of $3,300,000 for the erection of a state sanitarium for tubercular patients, and a new office building in Capitol Park. The Blumberg and Witkin bills, appropriating to Philadelphia $2,350,000 for road work and a bill providing for construction and maintenance of certain borough roads by the department of highways were vetoed by the governor, as were two other bills almost identical with similar bills passed. The bills appropriating $3,300,000 for a tuberculosis sanitarium and a new office building, and the altered administration bill making an emergency appropriation of $2,000,000 to the Department of Welfare for the maintenance of certain state-aided hospitals were also vetoed by Governor Pinchot, mainly because the legislature did not provide the additional revenue necessary and the state is facing a deficit at the end of this biennium. The governor's record on these measures is eight vetoes, three allowed to become laws without his signature (Talbot and Trainer bills), and eleven signed.

Thus, a sum between $13,000,000 and $14,000,000 may eventually be available for unemployment relief in Pennsylvania, although not a dollar is ear-marked for that specific purpose. At any rate, the sufficiency of relief legislation at Harrisburg is dependent upon the extent of local and private charity, the possibility of Federal relief and the actual conditions themselves.

Measuring Public Works Efficiency

CITIES are actually measuring in concrete terms the quantity and quality of their public works activities

BY DONALD C. STONE, *National Committee on Municipal Standards*

WHEN the National Committee on Municipal Standards was organized its main objective was to establish certain criteria or standards with which the quantity and quality of municipal services could be measured. It was believed that if definite yardsticks for measuring municipal work were available taxpayers could better determine whether their taxes were purchasing a sufficient amount of services and the right kind of services, and further that city officials would be provided with invaluable tools for planning and managing these services. The main emphasis of the Committee was upon measuring the results of service, the net benefit to the public so to speak, so that comparisons could be made of the relative utility of various services and a better basis obtained for determining the relative importance to be placed on each item in the municipal budget.

WORK AND COSTS

Before very much progress could be made toward measuring the results of city activities, the Committee found that standard work units for measuring the amount of work done and its unit costs must be established. How can the value of a service be measured without knowing how much is being furnished and its cost? Considerable progress was made in this direction by the Committee particularly with respect to such street sanitation activities as street cleaning, refuse removal and disposal, catch basin cleaning, and snow removal.

When the Research Committee of the International City Managers' Association appropriated funds in 1929 for furthering the work begun by the National Committee on Municipal Standards, the project was given a new impetus. As a means of attaching it more directly to the officials who in the end must be responsible for the execution of this work, the Committee on Uniform Street and Sanitation Records was organized representing the International Association of Public Works Officials (then the International Association of Street Sanitation Officials) and ten national organizations of municipal and civil engineers, city managers, comptrollers, health officers, research agencies, state leagues of municipalities, the National Municipal League, and the like.

As the task of establishing standard work units for measuring the amount of work done and of measuring costs through the use of cost accounting systems progressed, it soon became evident that the Committee must design complete records systems for control-

ling and analyzing the use of labor, the use of materials and supplies, and the operation of motor equipment. The keynote of these records and cost proposals has been to subject each phase of street sanitation and other public works operations to definite measurement and control. Individually, each record form or step in the procedure is designed to control the use of labor, of materials, or equipment, while together the records comprise a unified cost accounting system for measuring work done and its cost.

SCOPE OF DEMONSTRATION INSTALLATIONS

Upon making several demonstration installations of the Committee's proposals, it was found that the adoption of a records and cost system required frequently major changes in the city's purchasing and expenditure accounting practices. The Committee's program was therefore expanded to include standard accounting and purchasing proposals. Here again the main interest is in measuring and controlling various types of expenditures.

Moreover, in making the installations it proved impossible to separate street sanitation activities from other public works activities. The Committee's field of action has been enlarged, therefore, to include street repairs, sewer cleaning and repairs, property maintenance, traffic and street signs, and other activities commonly found in a municipal public works department.

Experience with the installations made clear that the mere analyzing of work and costs could not lead to effective management unless a definite work program were established, a program which specified the work to be done during the budget year, when to be done, the method to be employed, and its anticipated cost. Such a work program should naturally underlie the official's requests for funds. Therefore, the Committee's work has been injected into the entire problem of budgeting. The installation manuals explain in detail how a work program and budget is prepared and executed.

Demonstration installations have been completed in the cities of Brunswick, Georgia; Kenosha, Wisconsin; Troy, New York; Winona, Minnesota; and installations are now in progress in Cincinnati, Ohio, and Lexington, Kentucky. Manuals have been completed of the Brunswick and Kenosha installations and are now under preparation in the case of Troy and Winona. In each of these manuals we see a complete cycle of proposals for the entire public works department, and the manuals become what might be called manuals of administrative practice for the public works department.

NEED OF PUBLIC WORKS MEASUREMENTS AND STANDARDS

An essential characteristic of a science is that its subject matter can be reduced to exact measurement. The extent to which public works management can be a science therefore depends upon the extent to which public works officials can reduce their operations to systematic measurements. It is to aid the officials in this task of measurement that the Committee's proposals and installation manuals are specifically designed. All these proposals, whether they deal with cost accounting, general accounting, or budgeting, are designed to measure municipal work in one way or another.

The use of standards underlies almost every phase of our civilization. Industry, transportation, commerce, and nearly every detail of daily life, even including recreation, are entirely dependent upon standards. Standard specifications have made possible mass

production; by standardizing the gauge of tracks and equipment, transcontinental trains have become a daily occurrence; and standard dimensions of tennis or golf balls are fundamental to these sports. The use of standards is equally important in city public works.

DIFFERENCE BETWEEN MEASUREMENTS AND STANDARDS

The terms "standard" and "measurement" are frequently confused. A "standard" is a measure, example, or criterion of quantity, quality, time, or practice, which is established by authority, custom, or general consent as a definite basis of reference or comparison. A "measurement," on the other hand, is a comparison of the thing being measured with the standard, with allowances for conditions under which the measurement is made.

Several types of standards are employed by public works officials as the basis for measuring their operations.

(a) *Standard Measures:* All standards of length, weight, time, heat, size, and capacity are included here. Units for measuring work done are based upon these standards.

(b) *Standards of Quality:* These usually take the form of specifications. Testing and sampling are the usual methods of comparing an article with the standard.

(c) *Standards of Performance:* These standards involve such factors as efficiency in a motor, capacity of a sewer pump, durability of a pavement.

(d) *Standards of Practice:* Building codes, safety codes, and tested practices established by authority or experience are examples of these standards.

Although the use of standards is permeating public works practice at every turn, few standards have as yet been devised that will measure the results, efficiency, or completeness of a given service. Measurements of the quality of service or the social benefits derived therefrom are difficult to apply. Such questions are controlled to a marked degree by the public which, through its insistence or its willingness to pay, determines the quality and completeness of services. In practice the results are gauged, first, by the official in charge of the work; second, by the public as recipients of the service; and third, by the experienced critic or expert. With such a varied group of judges, each possessing different facts, prejudices, and interests, an agreement upon a standard of results or service is seldom attainable. However, if city public works officials install the standard proposals of the Committee on Uniform Street and Sanitation Records, they will have available an increasing number of measurements with which to answer these questions of quality and results.

Many of the Committee's proposals are novel to city officials; others have been a matter of long experience. The several demonstration installations have proved their practical application. And what is most important many cities are now using the demonstration manuals to perfect their own practices. The Committee is confident that within five years, more than half of the cities in the country will be employing part or all of its proposals for measuring and controlling public works activities.

What Municipal Home Rule Means Today

IV. Washington—Little Home Rule by Constitutional Grant

HOME rule sentiment is not strong in Washington cities. Uniformity, not diversity, the ideal

BY CHESTER C. MAXEY *Whitman College, Walla Walla*

IN HIS volume on *The Law and Practice of Municipal Home Rule*, published in 1916, Professor Howard Lee McBain said of home rule in the state of Washington:

> The Washington cases which have construed the grant of home rule powers as made in the constitution of 1889 present two conspicuous points of interest. In the first place, except in cases involving questions of procedure in the making and amending of charters, the courts have taken an exceedingly narrow view of the scope of powers embraced within this grant. The competence of the legislature to set the limit of the city's powers in the so-called enabling act was early recognized, and practically no power was sustained, even in the absence of conflicting state law, which could not be referred to this act. This means, of course, that in practice as well as in law home rule in Washington has been and is more largely a matter of legislative grace than of constitutional right. There is no power which cities have actually exercised which might not be taken away by a legislative repeal of the provision of the law by which such power is conferred.
>
> In the second place, a law of general applicableness supersedes and controls a contrary charter provision regardless of the subject-matter of such law and provision. The distinction between state and local affairs has not been read into the constitution by the courts, and therefore no sphere of immunity from the control of state laws has been created for the city even in respect to matters which are sometimes regarded as of strictly local concern.
>
> That the measure of home rule in Washington under the application of these rules of law has not been wholly negligible has obviously been due to the liberal practice of the legislature in conferring powers and in refraining from occupying fields of municipal control through the medium of laws of general application to cities of over twenty thousand inhabitants. It is patent, nevertheless, that this measure has been far short of what has prevailed in certain other states and that it is by no means as extensive as many advocates of home rule conceive that it should be.

This summation is as good today as it was fifteen years ago. A review of the cases since the time of Professor McBain's study reveals no material recession from the doctrine early approved by the Washington courts, that when a constitutional grant of home rule powers is coupled with a proviso requiring the exercise of such powers to be consistent with and subject to the general laws of the state, it is in reality a reservation of power to the legislature to control home rule cities by general legislation in so far as it may care to do so. The basic considerations for the Washington courts, therefore, have been these two: first, whether powers claimed by home rule cities properly belong to the field of local self-government; and, second, whether the legislature by general law has occupied the field. There was doubt, at the time Professor McBain

wrote, as to the right of the city to act without legislative authorization even though the legislature had not occupied the field. Since then the courts have intimated that cities may proceed without express legislative sanction in strictly local matters, but that when the legislature acts municipal freedom ceases.

WHAT THE COURTS GIVE AND THE LEGISLATURE DOES NOT TAKE AWAY

Having said this, one has said about all that can be said about the meaning of home rule in Washington today. What the seven home rule cities of this state really have is as much or as little municipal autonomy as the courts concede and the legislature does not take away. The courts have not been liberal in differentiating between state and local affairs, but the legislature, on the other hand, has not been so inordinately arrogant as to provoke a demand for greater municipal freedom. The fact is that the home rule cities of Washington have always held the balance of power in the legislature, and under the new apportionment will virtually control it. Legislative enactments occasionally have trod upon the corns of one municipality, but never have offended a sufficient number of cities at one time to cause general resentment.

To the person who may inquire whether the Washington legislature has been liberal or illiberal in the employment of its reserved power to control home rule cities by general statute, the only possible answer is that it has been both. The First Class Cities Act of 1890 was designed to serve as a general enabling act. It enumerated the powers of home rule cities under thirty-eight heads, these grants being, as a rule, couched in broad language which indicated that they were intended to be general endowments rather than restrictive provisos. The legislature has assumed, however, that it has power to withhold as well as to give, and this view has been sustained by the courts. Consequently there has been a considerable amount of legislation explicitly defining powers bestowed by the Act of 1890, and some expressly curtailing powers there bestowed. For example, the Act of 1890 conferred power in general terms to borrow money and issue bonds for the floating of loans. This has been narrowed by an act of 1915 which forbids the diversion of revenues secured by bond issues for special purposes to any other funds or uses.

The courts have experienced some difficulty in reconciling the Act of 1890 with subsequent enactments of the legislature. By the enabling act, for instance, first class cities are empowered to grant franchises to street railway companies. A later act, creating the state public service commission, gave that body large authority over municipal utilities. In *Benton* v. *Seattle* (50 Wash. 156) the state supreme court held void a charter provision requiring a referendum on franchises, saying that the city could not adopt a mode of approving franchises that was not contemplated by the Act of 1890. Yet in *State ex. rel. Tacoma R. and P. Co.* v. *Public Service Commission* (101 Wash. 601) it was held that the state's whole police power as to franchises had, by the Act of 1890, been vested in the city, and hence that the public service commission could not relieve a street railway company of its franchise even though the rates were entirely inadequate.

It would appear, then, that, even as to legislative enactments in pursuance of the reservation which the courts have held to be implicit in the home rule provisions of the Washington constitution, the actual amount of

municipal autonomy conveyed is a matter for judicial determination.

LITTLE HOME RULE SENTIMENT

The passion for local independence is probably not so strong in this relatively new state as in older parts of the country where urban communities have had time to acquire a deeper feeling of singularity. Municipal consciousness out here does not take umbrage at regimentation. Uniformity, on the whole, is welcomed as a necessary and useful expedient. This is well illustrated by the present conflict between provisions of the state traffic code and the enactments of several of the municipalities of the state. The state traffic code, adopted some years ago, requires motorists turning left at street intersections to make an "outside" turn, whereas several of the cities, being apparently unaware of the existence of conflicting state legislation, have introduced the newer, and also simpler and safer, "inside" turn. The state law undoubtedly prevails, and the courts have not been slow to say so. Cities thus find themselves confronted with the necessity of readjusting their traffic ordinances to conform with the state law and of abandoning steps taken in the direction of improved traffic regulation. But there has been no outburst of feeling against the legislature, no protest against the legislative strait-jacket in which cities are confined. The prevalent attitude seems to be that the situation is unfortunate, but can be remedied at the next session of the legislature. Meanwhile it is better to have uniformity throughout the state than to have one rule in one city and other rules in other cities according to municipal preference, despite the fact that the uniform rule may not be of the most approved character.

With such a spirit prevailing, home rule cannot be an issue of first magnitude, and in Washington it is not.

The Crain Removal Case and the Statistical Charts

New tests of a district attorney's fitness for office depicted in graphic charts

BY EDWARD A. WILLIAMS *Columbia University*

On March 7, 1931, the City Club of New York filed with Governor Roosevelt charges against Thomas C. T. Crain, district attorney of New York County, asking that he be removed from office. Three days later Governor Roosevelt appointed Judge Seabury commissioner to investigate the charges.

In a letter to Seabury, which was sent at the same time that the formal appointment was mailed, the Governor observes: "You will, of course, note that the charges made do not in any way involve the personal integrity of Justice Crain, but relate solely to his competency to fulfill the office which he holds." The scope of the investigation was thus limited to the simple question of determining whether Crain had shown such general incompetence as to warrant his removal.

THE STATISTICAL METHOD FOR DETERMINING EFFICIENCY

One way to determine the efficiency of Mr. Crain was to make an intensive study of the efforts of the district attorney in prosecuting certain vital cases. This was done by Judge Seabury, and Crain's handling of the racketeering problem, the magistrates' courts inquiry, the stock fraud cases, and other matters was deeply probed.

This article, however, is concerned with the other device employed to compute Judge Crain's efficiency; the statistical method. Upon the suggestion of Commissioner Seabury, Professor Raymond Moley of Columbia University prepared 15 charts (a number of which are reproduced in this article) to show the general efficiency of the prosecuting office of New York County. The data presented covered approximately 25 years, and the charts revealed:

(1) The district attorney's budget for each year;
(2) The size of his staff;
(3) The population of New York County;
(4) The amount of crime reported, with special reference to homicide and other significant crimes;
(5) The convictions obtained by the district attorney's office generally, with special reference to major crimes, namely, murder, manslaughter, grand larceny, robbery, burglary, and assault. Significant relationships were compared and the convictions subdivided to indicate whether they were by trial or plea of guilty, and what type of pleas were accepted.

Thus the major part of the investigation, consisting of a qualitative examination of a few specific cases, was supplemented by a statistical examination of the work of the office in the mass throughout the 25-year period.

RATIO OF CONVICTIONS TO NUMBER ON STAFF

The district attorney's office exists primarily to obtain convictions, and its ability to do so is a fair test of its efficiency, despite a vigorous dissent by Samuel Untermeyer,[1] counsel for Judge Crain. Obviously, the district attorney's office is but one cog in the machine that grinds out a conviction. The police arrest, *the district attorney's office prosecutes*, counsel defend, the jury decides, the judge presides and sentences, and appellate courts review. Any unethical zeal on the part of staff members in fulfilling their function, can, and should be taken care of by the district attorney himself. The high number of convictions in proportion to trials obtained by Jerome, Whitman, and Swann were not obtained by unfair practices, but by a high degree of care in selecting and preparing cases for trial.

Convictions shown by charts I and II consist of all cases sent to the jury which resulted in a verdict of guilty. Directed verdicts of not guilty were properly included in the failure-to-convict-group, as in these cases evidence of guilt is so slight that the judge directs the verdict on the theory that the jury could reasonably return nothing but a verdict of not guilty on the evidence presented. Pleas of guilty are not considered in these particular charts as they were intended solely to test the district attorney's efficiency in jury cases. Later I shall comment on Crain's handling of pleas.

Chart I depicts the ratios of jury

[1] As Mr. Untermeyer later introduced a score of charts which purported to show that Crain had a great conviction record, *quaere*—was he jesting when he objected vigorously to Dr. Moley's chart on the ground that "it is not . . . the right of a district attorney to measure the success of his administration by the number of convictions"?

CHART I

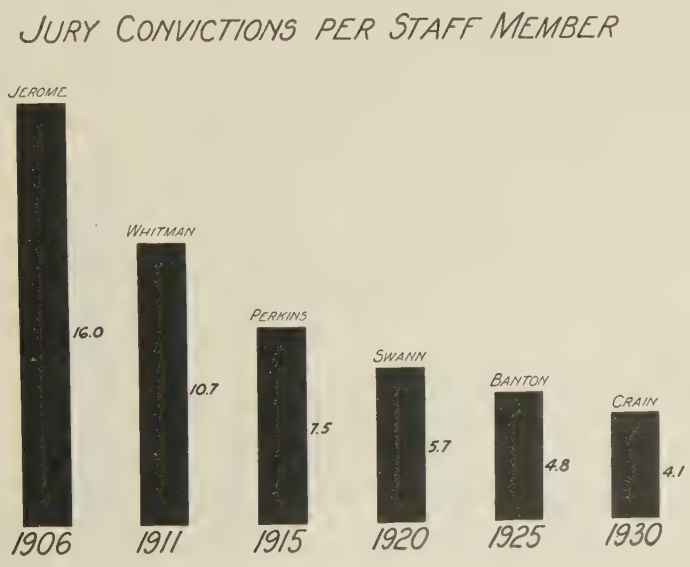
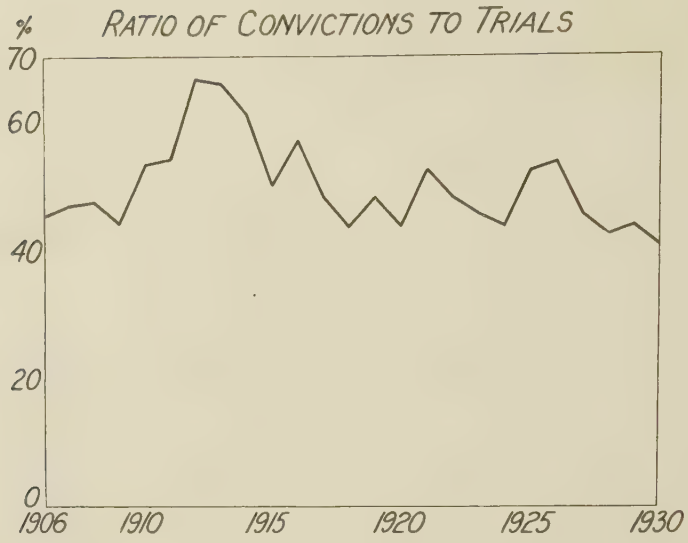


CHART II



convictions to the number of persons on the district attorney's staff. It shows a steady decline, ending with a new "low" established by Judge Crain. His staff were successful in only 40.8 per cent of the 657 trials in which they engaged, or only 4.1 convictions per member.

Mr. Untermeyer objected vigorously that only those men on the staff actually engaged in trial work should be included in this ratio. But this is clearly unsound. All 65 assistants were part of the "lawyer power" of the office, and contributed to the successful prosecution of crimes coming to the attention of that office. Likewise, total trials undertaken would have been a bad standard, as this might show a high ratio for a staff that lost every case that it tried.

RATIO OF CONVICTIONS TO TRIALS

There can be no doubt that the district attorney is an important, if not a dominating factor, in weeding out cases both before the magistrates, and before and during trial in the grand jury. If he has properly performed this function, the cases left to be tried are those, in the main, in which the district attorney believes the defendant to be guilty. It is common knowledge that the cases he sends to the jury are his "strong" cases, and as such they are a measure of the soundness of his judgment in deciding which cases deserve to be tried. The result he obtains, as measured by the ratio of jury convictions to trials, shows conclusively the effectiveness of his staff in presenting the cases to the jury. In the light of this, Crain's record revealed by Chart II to be the lowest in 25 years, is a really significant comment on his efficiency.

We may assume that the efficiency of defense counsel is a fairly constant element through the years. The attitude of juries may change slightly in a generation, but there is no positive proof that our juries today are less prone to convict when a good case is made out, than were the juries of five, ten, or twenty years ago. Chart II graphically depicts Crain's lack of success even with respect to his "strong" cases on which he went to the jury.

Mr. Untermeyer further maintained that those cases in which the district attorney prepares the prosecution so well that the defendant pleads guilty because of a sense of futility of further resistance, should have been included in the conviction group. This is true when the district attorney forces the defendant to plead guilty to substantially the offense charged. However, there is no merit to this argument where the district attorney, to bolster his conviction record, offers the defendant a bargain-day plea of guilty to misdemeanor, although he himself has helped indict the defendant for felony. The charts we are now going to consider show conclusively that Crain's record, far from being improved by a consideration of pleas, grows even less favorable as a result.

THE GRAVER CRIMES

During the investigation, Judge Crain stated that he desired to be judged on the basis of his prosecution of the "graver" crimes of murder, robbery, burglary, and grand larceny.

In charts III and IV the first bar shows the number of crimes reported to the police in 1930. The next bar represents the number of arrests made by the police for the crime in question. The third bar gives the number of indictments procured by the district attorney from the grand jury. The fourth, and most significant bar, contains all convictions, whether by plea, or after trial, and subdivides them to show the degree of conviction obtained.

Mr. Untermeyer objected vigorously to the first two bars in both charts on the ground that they bear no relation to the district attorney, and were included solely to make the figures in the last bar appear insignificant. There is a degree of force to this view. I can see no direct connection between the number of crimes reported and the district attorney. Likewise it seems to me that the number of arrests is beyond his control. These two bars appear to me rather to indict the crime suppressing machinery of New York County.

The number of indictments procured, however, is a matter directly bearing on our problem. It is generally conceded that the district attorney exerts a very great influence over the grand jury. Thus there can be no escape from the conclusion that the number of indictments secured is representative of

CHART III

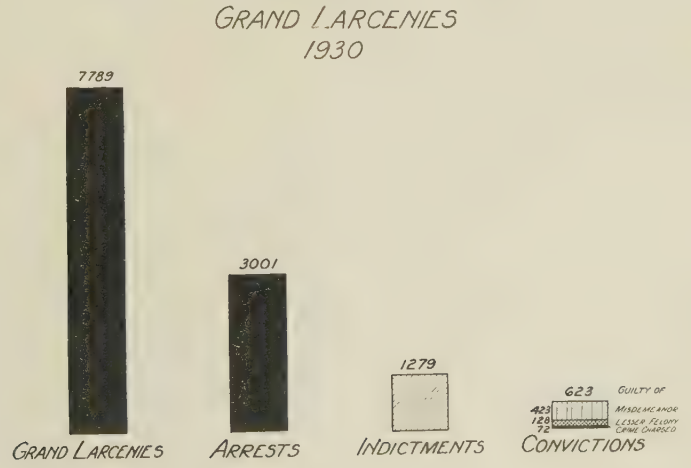
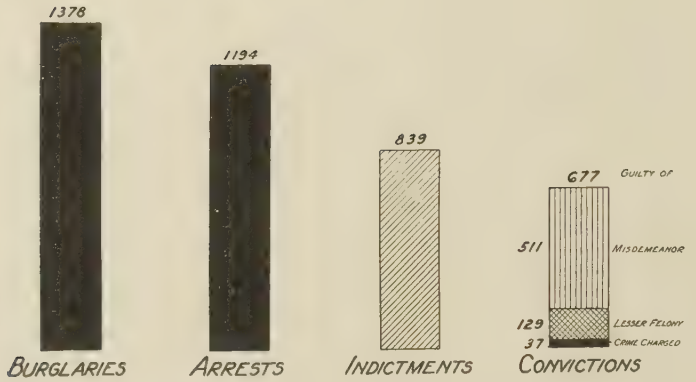


CHART IV

BURGLARIES
1930



the number of prosecutions which the district attorney believes should be initiated for the crime in question. The ultimate disposition of these indictments constitutes a very definite test of his effectiveness in obtaining sentences on the charges he assisted the grand jury in making.

An examination of chart III, bar 4, reveals the typical Crain situation. Six hundred and twenty-three convictions were obtained from the 1279 indictments. Conviction of itself conveys no information to us, and we go on to see what type of conviction was obtained. We find that only 72 were of the crime charged, and but 128 were for some lesser felony. Four hundred and twenty-three of these so-called convictions were obtained by allowing the defendant to plead guilty to misdemeanor, although indicted for grand larceny. All of these 423 misdemeanor convictions were by plea, accepted by the district attorney, as jury convictions of misdemeanors were classed as lesser felony convictions, to bring out clearly the extent to which Crain was directly responsible for the failure to obtain felony convictions for felony indictments. Crain apparently followed the path of least resistance, allowing the defendants to get off with light sentences in exchange for pleas of guilty which he could use to fatten his conviction record.

Chart IV shows the same situation in regard to burglaries. There were 839 indictments, and 677 convictions. This seems to be a good record until we find that but 37 were convicted as indicated, and that only 129 were sentences to lesser felony. Five hundred and eleven were allowed to plead guilty to misdemeanor, and in a proper sense their cases were not felony convictions at all.

COMPARISONS WITH PREVIOUS ADMINISTRATIONS

Charts V and VI compare the work of prior district attorneys in respect to the same factors as represented in Charts III and IV. A comparison of each year from 1906 to 1930 would have been ideal, but the data being difficult to obtain, the approved statistical method of selecting years at regular intervals was employed. Because of Mr. Banton's long service, it was not possible

CHART V

GRAND LARCENY CONVICTIONS

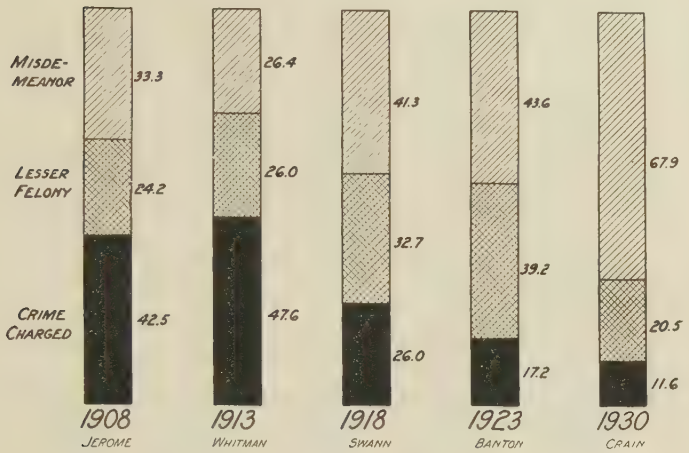
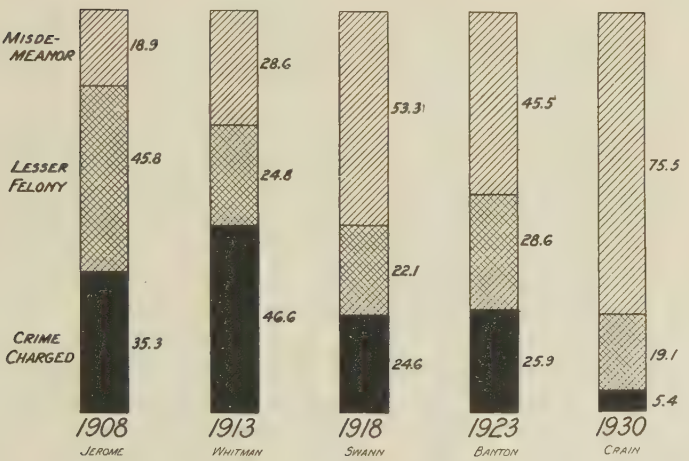


CHART VI

BURGLARY CONVICTIONS

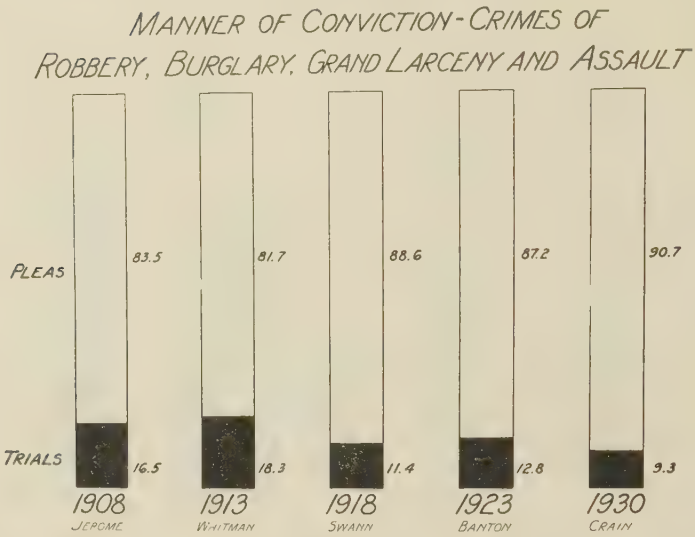


to adopt the five-year interval between him and Crain.

No extended comment is necessary in regard to chart V, but I should like to call attention to the wide difference in the meaning of "conviction" under Whitman in 1913, and under Crain in 1930. Roughly speaking, one-half of Whitman's convictions on grand larceny indictments were for the actual crime charged, one-fourth for lesser felony, and one-fourth for misdemeanor. Crain's convictions are roughly one-tenth crime charged, two-tenths lesser felony, and seven-tenths misdemeanor. In other words, convictions under Whitman were three-fourths felony and one-fourth misdemeanor; under Crain they were three-tenths felony and four-tenths misdemeanor.

Chart VI further discredits Crain. Whitman again shows three-fourths felony and only one-fourth misdemeanor convictions. Jerome shows

CHART VII



four-fifths felony and only one-fifth misdemeanor convictions. Crain obtained three-fourths of his convictions through misdemeanor pleas, and had only one-fourth felony sentences.[1]

Charts VII, VIII and IX are composite in nature, and deal with grand larceny, robbery, burglary, and assault, as a single group. Chart VII divides all convictions for these four crimes into the two classes represented thereon. It shows quite clearly that convictions in New York, in common with most cities in the United States, are being obtained more and more by pleas rather than by jury trial. A memorandum submitted on behalf of Crain quotes Judge Allen as follows: "Judge Crain is ultra-conservative respecting pleas."

The mere fact that Crain obtained 90.7 per cent of his convictions by acceptance of pleas does not of itself constitute ground for criticism. Chart VIII analyzes these pleas, however, and shows that not only did Crain accept pleas more often than did prior district attorneys, but that he exercised very little discretion as to the type of plea he allowed. Column 5 of chart VIII indicates that 61.7 per cent of all pleas to indictments for the four offenses were for misdemeanors, and only 38.3 per cent were for felonies. In other words, when Crain talked of his conviction record, he boasted of the fact that he could often force a defendant indicted for grand larceny to plead guilty to something like walking on the grass.

Chart IX subdivides convictions for all four crimes whether by plea or jury trial into our three classes to show how serious the convictions were. Once

[1] Two other charts presented dealt with the crime of robbery, and showed that Justice Crain secured 426 convictions for robbery, of which the vast majority were for felony, out of 693 indictments. Robbery is the easiest of all crimes to prosecute because if there is positive identification success is assured and if there is no positive identification the police usually drop the prosecution. In regard to this particular crime Crain was able to make good his indictments by felony convictions. His record here, however, was no better than normal since all district attorneys have been successful in prosecuting this particular crime.

CHART VIII

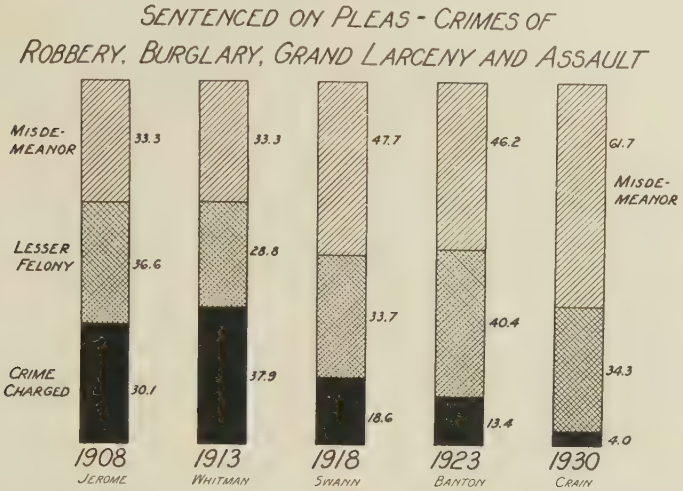
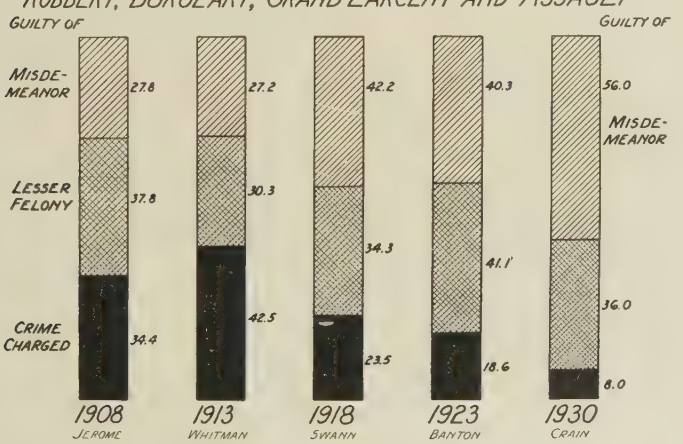


CHART IX



more we find that Crain did not obtain felony convictions for felony indictments. Looking over the years from 1908 to 1930 we find Crain's record of 8 per cent convicted as charged to be poor in comparison with Swann and Banton, and really pathetic as opposed to the record of 42.5 per cent offered by Whitman. Furthermore, he was the only district attorney to handle his felony indictments in so extraordinary a manner as ultimately to produce more misdemeanor than felony convictions.

HOMICIDES

Other charts not shown here demonstrate the upward tendencies of homicides in New York County despite declining population and reveal that in 1930 for 273 homicides 144 persons were indicted of whom only 8 were

convicted as charged and 47 of a lesser charge.

Crain had the lowest ratio of convictions for homicides to known-homicides of any district attorney within the last 25 years.

There are two reasons why Crain should have concentrated on the homicide problem. As an efficient district attorney he should have known of the serious increase in murder in New York County, and massed the power of his office to check it. Secondly, the law requires that the medical examiner notify the district attorney of every homicide, which seems to place a special responsibility upon him to aid the police in solving these cases. Obviously the mere number of convictions Crain obtained was no test of his efficiency, as the number of convictions should rise in proportion to the number of murders committed.

SEABURY MISSES THE POINT

We shall now consider what use Judge Seabury made of the statistical material in his report to Governor Roosevelt.

I shall limit my discussion to his interpretation of charts III to IX, since they contain the crux of the case, and were the only ones singled out by Seabury for extended comment. Writing in regard to these charts, and with special reference to chart III Seabury said:

> For example, in the year 1930 there were 1,279 indictments for grand larceny filed. Of these, 623 resulted in convictions, but of this number only 72 resulted in a conviction of the crime charged, whereas 128 resulted in convictions of felonies less than those charged, and 423 resulted in convictions of misdemeanor, all of which latter convictions were had upon pleas of guilty.

From these figures Seabury draws the following erroneous conclusion:

> Misdemeanor cases are triable before the Court of Special Sessions and might be presented in that court and there finally disposed of. Thus out of 1,279 indictments for grand larceny filed in 1930 . . . there were 423 of these cases which were misdemeanor cases and might have been more economically disposed of had informations for misdemeanors been filed in the Court of Special Sessions in the first instance.

Seabury's reasoning may be boiled down to this: If a misdemeanor conviction is obtained, the offense committed must have been a misdemeanor; 423 misdemeanor convictions show that 423 misdemeanor cases were incorrectly commenced by indictments instead of being tried from the beginning in Special Sessions. Thus Seabury feels compelled only to chide Crain for taking up improperly the time of the General Sessions and the grand jury with 423 misdemeanor cases.

However, if we accept indictments rather than convictions as the logical starting point, Seabury's reasoning is reversed. It was upon the theory that the indictment shows the true nature of the offense committed that the trial was fought. It was correctly assumed that all district attorneys should know the difference between felony and misdemeanor, and that they indict only those thought on good evidence to be guilty of felony. Thus 423 felony indictments show 423 felonies to have been committed, and the obtaining of misdemeanor convictions for these felonies clearly shows inefficiency.

We have two reasons to assume that Crain himself never believed that because he succeeded in obtaining misdemeanor convictions for felony indictments they were really misdemeanor cases. In Untermeyer's charts, presented in rebuttal, all with one exception set forth the number of convictions without bothering to tell what the convictions were for.[1] In

[1] Judge Seabury is clearly wrong when he states in his report to Governor Roosevelt that the charts of both Dr. Moley and Mr. Unter-

this lump sum he always includes misdemeanor convictions for felony indictments as felony convictions. Secondly, in Untermeyer's memorandum he practically admits that felony indictments indicate true felony cases, by attempting to excuse Crain's failure to obtain felony convictions by the prejudicial effect of the Baumes law and for other reasons.[1] At no time did Crain or Untermeyer seriously deny that the district attorney had the responsibility of either showing felony convictions for his indictments, or showing good cause why they were not obtained. That they failed to establish a valid excuse has of course been the thesis of this article.

Seabury's statement that misdemeanor convictions indicate misdemeanor cases is little short of naïve in the face of the following quotation from 219 Appellate Division 373.

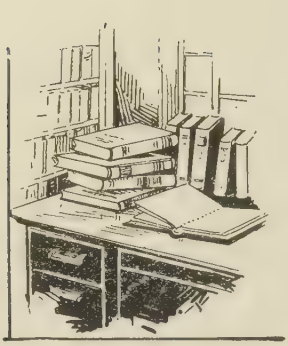
> It is a matter of common knowledge that District Attorneys frequently bargain with those charged with crime, and either under promise of *immunity, or acceptance of a plea of lesser degree than that for which the defendant was indicted,* those deserving of extreme punishment are permitted to escape with punishment all too inadequate for the crime committed. We deplore the tendency of some district attorneys *following the course of least resistance,* thus to relax the rigid enforcement of our penal statutes.

Having shown that Seabury's hypothesis does not conform to the facts, we may add that even if true it fails to give Crain a valid defense. When Crain indicted for felony, he must have done so on the belief that felony was the proper charge. In 423 grand larceny cases his belief was erroneous. Charts VIII and IX under the Seabury hypothesis indicate that his judgment in regard to felonies generally was poor. What greater proof of inefficiency can one desire than the spectacle of a district attorney mistakenly indicting people for serious offenses in such large numbers as to clog the courts and prevent their proper operation? All of Untermeyer's grilling cross-examination did not shake the facts, nor did his excuses provide a justification for them. It remained for Seabury to throw a haze about the charts that I hope I have successfully dispelled.

---

meyer point to the growing tendency on the part of district attorneys to accept misdemeanor pleas to felony indictments. Untermeyer's charts could not point to this conclusion because they did not subdivide convictions to show the degree of crime they were for. It is this very fact that emasculated Untermeyer's charts and made them of doubtful value in regard to the problem before Seabury.

[1] If the Baumes law had placed a serious obstacle in the way of obtaining a normal quota of felony convictions, the year following its passage would have shown an unusual increase in the acceptance of pleas to misdemeanors for felony indictments, since the district attorney would have been forced to accept these pleas as a last resort. That the Baumes law did not have this effect is shown by a recent study of Dr. Moley which points out that there has been a steady increase during the last 15 years in the practice of accepting misdemeanor pleas to felony charges, and that no unusual impetus was given to this movement by the passage of the Baumes law.



RECENT BOOKS REVIEWED

THE FRENCH CIVIL SERVICE. By Walter Rice Sharp. New York: Macmillan Company, 1931. XII, 588 pp. $3.25.

In France and Germany, the problem of civil service is generally approached from the viewpoint of public law and jurisprudence. Writers in these countries are chiefly concerned with the status, rights, duties and responsibilities of public officers. In the United States, the same problem is generally regarded from the angle of administration and management.

This difference in approach has made it extremely difficult to compare one system with another to any advantage. Dr. Sharp's new book is valuable for many reasons, not the least of which is the fact that he has presented the French system from the American point of view. Obviously, this study will be of great assistance to European scholars as well as to American, since it affords at last a common basis of comparison and discussion. The amount of original work which Dr. Sharp has been compelled to do is very great, for he could derive little help from the standard French studies in the field.

The first four chapters paint the general background of the French system. They are followed by a description of the examination procedure and other conditions for the selection of the personnel, including the selection of experts and persons belonging to professional and scientific vocations. Appointment, classification, compensation, promotion, transfer, turnover, and discipline are all treated in due order.

Two chapters are devoted to the personnel systems in several of the chief governmental department services. One chapter is devoted to the study of the Municipal Civil Service in a single city, Bordeaux. This section of the book is an excellent piece of detailed work.

The last three chapters are entitled, respectively, "Official Bureaucracy and the Public," "The Potentialities of Administrative Syndicalism," and "The Renovation of the Bureaucracy." Dr. Sharp considers that the French system is unduly bureaucratic, and that it is not properly integrated.

To the reader familiar with the French literature on the subject, it may appear that Dr. Sharp has somewhat slighted the French legalistic viewpoint. Perhaps the best answer to this criticism is that the monumental studies of Professor Jèze, *Les Principes Généraux du Droit Administratif*, have rendered any other work in the same field superfluous. The study of Dr. Sharp's book will unquestionably reward any reader who is interested in the civil service problem. It takes its place at once among the indispensable works in its field.

FREDERICK FRANK BLACHLY.

BUILDING HEIGHT, BULK, AND FORM. By George B. Ford, Assisted by A. B. Randall and Leonard Cox. Volume II of the Harvard City Planning Studies. Cambridge: Harvard University Press, 1931. 188 pp. $3.50.

Completion of this volume of research must have been a difficult task after the saddening death of the author, George B. Ford. Even an almost-finished investigation of this kind involves a great deal of statistical and general material, whose inclusion in the final report is a question of nice judgment on the part of the author, and whose disposal necessarily presents an even greater problem to an outsider. Dr. Hubbard has dealt very carefully with the collected material, and the statistical data seems excellent, both in quantity and quality.

The object of the research as explained in the Editor's Note was determination of "the optimum size and shape of buildings on land of high value, obtainable under present conditions or under conditions probably or fairly to be hoped and striven for in the near future." There is no attempt to answer the question: do high land values necessitate tall buildings, or do tall buildings create land values? But a considerable amount of data bearing on the subject is presented for the reader's consideration.

The unit or "plane of reference" chosen was land value, and the bulk of the studies were based on existing buildings in the city of New York. Dangers lurking in the use of land value as a unit of reference for such a study were as well known to Mr. Ford as to any readers of this volume, but, in a piece of research so closely confined to one large city, the use of this unit is defensible.

High buildings, as such, are neither attacked nor supported. Their effects on public welfare are suggested in the presentation of allied data with respect to traffic congestion, sunlight, noise, and health. The report further indicates that economic studies of the high building should include costs of the additional services which it demands of the city, but in the absence of adequate data relatively little consideration was given to this phase of the subject.

It might also be suggested that the book has a certain popular appeal, beyond its interest to the profession, for high buildings are dramatic and the immense sums of money expended on them, the financing programs necessary for their construction and relationship of rentals to costs, not to mention the difficulties involved in pleasing tenants, are all subjects of real fascination.

Russell V. Black.

✠

The Revenue System of New Jersey. Report No. 6 of the Commission to Investigate County and Municipal Taxation and Expenditures. Trenton, New Jersey, 1931. xii, 276 pp.

Prior reports of this commission emphasized economies in expenditures. The present report deals primarily with the problem of a more equitable distribution of the local tax burden. After brief attention to the statistical aspects of state and local revenues for 1928, the bulk of the discussion that follows is devoted to the various taxes that are used for local purposes. The state revenues are considered incidentally in this report, since in New Jersey, as elsewhere, the state and local finances are closely interwoven.

It is logical of course that the report should concern itself mainly with the manifest inequities of the property tax and the methods of improving this tax. The commission estimates that real estate now bears 80 per cent of the tax burden, although 50 per cent or more of the wealth consists of tangible or intangible personalty. From the revenue side, the commission believes, therefore, that tax relief and equalization must come through the use of new revenues under a broader tax system.

The commission recommends that all taxable tangible property, real and personal, except that of utilities, be assessed on a county basis by competent assessors subject to state supervision; that tangible personal property be classed separately, and perhaps taxed at a limited rate, unless the efforts at the reduction of tax rates should prove sufficiently successful to render such classification unnecessary; that intangible property be classed separately, and assessed by the state, and pay a property tax based on its earnings, or on its value; that all business pay a business tax; that all persons with incomes over a moderate minimum pay a personal tax based on capacity to pay; that the yield of new taxes should not be devoted to the expansion of existing state functions, but rather to reduce and equalize existing taxation; that highway traffic should bear sufficient taxation to cover the cost occasioned by that traffic, including the maintenance of the highway system, the regulation of traffic, and the protection of property and rights affected; that out of the new revenues the state assume the responsibility for the costs of elections, of the courts, of the custody of persons under sentence, and of all county welfare expenditures, and similar activities, on condition that local budgets be correspondingly reduced, so that the local budgets may be entirely free from the above mandatory expenditures.

This report is a thorough and carefully prepared analysis of the situation on tax matters in New Jersey. Arguments are fortified with a discussion of underlying principles. Data are presented to establish the desirability or undesirability of possible alternative measures of tax reform. The report was prepared under the direction of Professor Harley L. Lutz of Princeton University and with the staff assistance of Griffenhagen and Associates.

Martin L. Faust.

INTELLIGENCE IN POLITICS. By Paul W. Ward. Chapel Hill: The University of North Carolina Press, 1931. 126 pp. $1.50.

This book may be regarded as an attempt to fashion a tool for thinking about social and political problems in an age which is witnessing fundamental institutional changes. It is Mr. Ward's belief that "there are a few elementary distinctions which can be of great value in clearing up the ambiguities of current social thinking" (pp. 6–7), and the bulk of the book concerns itself with the statement of these distinctions. There are chapters on Institutions and Institutional Change, The Meaning of Democracy, Law and Human Conduct, and International Consolidation, in which the author attempts to assemble the data for constructive political thinking. With much of what he says there can be no serious disagreement though it seems to the reviewer that some problems have been oversimplified in the attempt to create a usable technical equipment.

The final chapter on Situational Thinking in the Social Sciences tempts one to a more extended comment than is feasible in a short review. The point of view there suggested is that developed by Dewey and called by him "critical radical empiricism," and by others generally "experimentalism." Though this point of view is, as the reviewer is well aware, enormously popular in certain circles, it does not seem to him to offer a fruitful approach to the really crucial issues of politics or of life generally.

LANE W. LANCASTER.

University of Nebraska.

REPORTS AND PAMPHLETS RECEIVED

EDITED BY EDNA TRULL

Municipal Administration Service

Purchasing Methods of New York State Municipalities.—Joel Gordon. New York State Conference of Mayors and Other Municipal Officials, Bureau of Training and Research, Albany, 1931. 107 pp. On the basis of questionnaires sent to all municipalities in New York State and extensive field trips, Mr. Gordon has described the methods followed in purchasing the material used. With tables, record sheets and forms to supplement the text, he has dealt with the legal basis for municipal purchasing, administration, organization, personnel and cost, the stimulation of competition, placement of orders, contracts, inspection and testing, storage and stock control, accounting and payment procedure. Not the least interesting part of the book is the section on Conclusions at the end of each chapter in which recommendations are made for improved practice. (Apply to Bureau of Training and Research, New York State Conference of Mayors, Albany.)

*

Contract Surety Bonds for Municipal Improvements in New York State.—Clarence H. Girard. New York State Conference of Mayors and Other Municipal Officials, Bureau of Training and Research, Albany, 1931. 80 pp. Continuing its program of publication in coöperation with the School of Citizenship and Public Affairs of Syracuse University, the Bureau of Training and Research now publishes a study on the timely subject of contract bonds as handled by New York State municipalities. The data on which the study is based has been secured from 63 cities. Mr. Girard deals primarily with the extent to which the corporate surety bond guarantees the responsibility of a contractor, whether such a bond is adequate security for a municipality against contractors who default, whether the cost of such protection is commensurate with the security provided and the other measures a municipality might provide to protect itself from the expense and delay caused by defaulted or abandoned contracts. Standard forms are also included. (Apply to Bureau of Training and Research, New York State Conference of Mayors, Albany.)

*

City Manager Yearbook 1932.—International City Managers' Association, Chicago, 1932. 275 pp. The eighteenth City Manager Yearbook is an important addition to the already well-known series. The bulk of this volume is devoted to the proceedings of the 1931 conference of the International City Managers' Association at which the major subjects of unemployment relief, reducing governmental expenditures and city manager policies were discussed by managers

and other authorities. The brief talks of 35 managers on their particular problems are also of moment. The history of the development of the council manager plan and various interesting statistics about the profession are given, including a complete directory of city managers. The Yearbook is of interest to all those concerned with municipal problems. (Apply to the International City Managers' Association, 923 East Sixtieth Street, Chicago. Price $2.00.)

*

Municipal Utility Accounting.—Roy L. Reirson. League of Minnesota Municipalities, 1931. 12 pp. Of great practical interest and usefulness to small cities and towns which own and operate light, water, and other utilities, especially in states in which municipally owned utilities do not come under the jurisdiction of a state public service commission, is this manual on municipal utility accounting. It contains an outline of forms for a standard system of accounts, including a simplified classification especially applicable to small plants, as well as set-ups for comparative income statements and balance sheets. Managers and directors of utilities in the smaller municipalities will find it especially valuable as an aid to the solution of their accounting problems. (Apply to League of Minnesota Municipalities, University of Minnesota, Minneapolis.)

*

Plans of Unemployment Relief in Virginia Cities and Towns.—League of Virginia Municipalities and State Department of Public Welfare, 1932. 20 pp. Although unemployment has not been as marked in Virginia as in some other states its municipalities have, of course, found it necessary to evolve methods of dealing with the conditions there. The city of Hopewell has been especially successful in handling its cases, and this pamphlet is primarily a description of the plan followed there, with necessary forms, report blanks and statistics included. In meeting their continued problems of unemployment, city authorities will welcome this additional material on a satisfactory means of offsetting to some extent the hardships involved. (Apply to League of Virginia Municipalities, Travelers Building, Richmond.)

*

Uniform Special Assessment Law.—Investment Bankers Association of America, Toledo, 1931. 42 pp. The deplorable financial condition of cities today is in no small measure due to the abuses of special assessments. The importance of this field was recognized by the Municipal Securities Committee of the Investment Bankers Association of America, whose sub-committee submitted this report. The model law is supplemented by valuable explanatory notes. The material presented covers various problems of special assessment financing, both as to special assessments in the limited sense and as to those issues of bonds which pledge the credit of the entire municipality in addition to the assessments. (Apply to John S. Harris, Stranahan, Harris & Company, Inc., Toledo, Ohio.)

*

The Principles of Land and Building Appraisals as Scientifically Applied in Cuyahoga County.—John A. Zangerle, Board of County Commissioners of Cuyahoga County, 1932. 86 pp. The reassessment required by law every six years is the occasion of this valuable publication in which Mr. Zangerle explains the basis for the appraisals made. Having adopted the motto of "more equalization and less taxes," the appraisers worked on definite system and standards to the end that property rather than individuals might be assessed, that uniformity be maintained, that the principles (as set forth in this document) be so clear that any taxpayer could assess his own property or any other in the County, that graft be prevented, that the Board of Revision might correct and adjust in harmony with other assessments, and that errors be more easily detected. The publication is devoted primarily to maps and diagrams of Cuyahoga County, but the pages of text briefly describe the now famous Zangerle appraisal system. (Apply to John A. Zangerle, County Auditor, Cleveland, Ohio. Price $4.00 to non-residents of Cuyahoga County.)

*

County Government.—M. Margaret Kehl. New York Municipal Reference Library, 1932. 28 pp. Miss Kehl has done a genuine service in compiling a bibliography on county government. The annotated list of references has been divided into sections on other bibliographies on the subject, general articles, material listed geographically by states and material listed by county officers and functions. The increasing number of those interested in county government will be grateful for this important tool in their work. (Apply to New York Municipal Reference Library, Municipal Building, New York City.)

JUDICIAL DECISIONS

REVIEWED BY C. W. TOOKE *Professor of Law, New York University*

Power to Reduce Salaries.—Reduction of Salaries of Officers and Employees—Effective Control of Boards of Finance.—The highest courts of Michigan and Massachusetts have recently been called upon to construe the effect of charter provisions for the control of local finance upon the power of a city to reduce the salaries and wages of its officers and employees. In *Council of City of Saginaw* v. *Board of Estimates*, 239 N. W. 872, the Supreme Court of Michigan holds that the charter power given to the local board of estimates to reduce any items of expense submitted by the council for its approval was not impliedly repealed by a later amendment providing that all appointive officers and employees shall receive such salaries or compensation as the council shall determine. The effect of this control over the expenditures authorized by the council is to render all salaries or wages necessarily subject to the ultimate decision of the board of estimates, so that any salary or contract for wages may at the beginning of any year be reduced without violating any rights of the persons affected.

In *Paquette* v. *Fall River*, 179 N. E. 588, the Supreme Judicial Court of Massachusetts came to a similar conclusion that the school committee was lawfully authorized to make a reduction of twenty per cent in the wages of school teachers, the local board of finance with control over the budget having notified the members of the committee that it would not otherwise approve their estimates. It is noteworthy that the supervisory board of finance of Fall River was created by chapter 44 of the Laws of 1931. The court calls attention to the charter power of the school committee to make permanent employment of teachers "to serve at its discretion" as limiting the power of the board to adopt an unchangeable salary schedule. Officers charged with official discretion may not by any act of their own contract or barter away their duty to a continuous exercise of such discretion as the public necessities may require. It seems, however, that even without the express charge to exercise a continuing discretion, the power to fix salaries or contracts for wages would be held to be subject to the statutory power of the supervisory board of finance to approve or disapprove the annual estimates submitted to it.

The method of control over municipal salaries suggested by the above decisions may be applied by all cities having a similar budgetary control, apparently even where the state constitution forbids any change of salary during the time for which an officer is elected. In some cases, as in the Education Law of New York, statutes expressly limit the power of local authorities to fix salaries paid to employees for a longer term than one year (*Matter of Rockwell* v. *Board of Education of Elmira*, 214 App. Div. 431, 212 N. Y. S. 281). On the other hand, it sometimes occurs, as in the case of the city of New Orleans, that the salaries of many of the municipal officers are expressly fixed by the state constitution and can be altered only by a constitutional amendment. The recent crisis in the finances of many of our cities has shown how advisable it is that in some way, such as shown in the Saginaw and Fall River cases, a supervisory control be established that will make possible a legal and orderly reduction of the salaries of municipal officers and employees without the necessity of resorting to coercion by threats of abolishing offices and posi-

tions. Security of tenure in public office or employment may well compensate for the precarious right to a continuing rate of compensation often assured by contract in private employment.

⁂

Invalid Debts.—Indebtedness—Effect of Recitals in Bonds Issued Without Proper Authority.—The question as to what liability, if any, a municipality incurs upon negotiable instruments absolute in form, containing recitals that all necessary procedural steps have been complied with, has been before the Supreme Court of South Carolina in two recent cases, *South Carolina National Bank* v. *Union County*, 160 S. E. 733, and *Bolton* v. *Wharton*, 161 S. E. 454. In both of these decisions it was held that the municipality was not estopped to set up the invalidity of the instruments, either upon constitutional grounds or for failure to comply with statutory procedure. The majority and dissenting opinions in the two cases review extensively the authorities both state and federal bearing upon the questions involved.

In the first case, the obligations of the county were issued under a general power, but were held invalid because of defects in the prescribed method of execution. The proceeds of the notes were deposited in a bank which failed so that they were never used for a legitimate municipal purpose. In the second case, the bonds were issued and the proceeds used for the purchase of stock in a financial enterprise, which the court holds was for a private purpose and therefore clearly beyond the powers of the corporation. In both cases, the purchasers of the obligations took them in good faith and for value and the proceeds were turned over to the fiscal officers of the municipality. Notwithstanding these facts, the court holds that no recovery may be had either upon the instruments themselves, nor in quasi contract for the money actually received.

It is well settled that no recovery will be given against a municipality for money received upon void instruments unless the proceeds have been expended for valid municipal purposes which confer a legal benefit upon the corporation. The decisions in these cases are supported by the recent federal case of *City of Sanford, Florida* v. *Chase National Bank*, 50 Fed. (2d) 400, which holds that the deposit of money received upon void instruments to the credit of the city in a bank that becomes insolvent is not such a benefit as the law requires as a basis of quasi-contractual liability. Without going further into the legal argument as to the rights of those advancing money upon invalid obligations, it is obvious that such unfortunate occurrences seriously embarrass the credit of all municipalities in the state where such recovery is denied. The interest of the state at large seems to warrant the setting up of some form of state administrative control that will be a guaranty that securities issued by municipalities shall have the warrant of law and shall be indefeasible in the hands of bona fide investors.

⁂

Zoning.—Principles of Comprehensive Zoning Not Yet Accepted in Texas.—As a culmination of a long series of decisions beginning with *Spann* v. *Dallas*,[1] the Supreme Court of Texas in *Continental Oil Co.* v. *City of Wichita Falls*, 42 S. W. (2d) 236, reaffirmed its position that no districts of a city may be zoned against use for any purpose unless the forbidden use be either a nuisance in law or one in fact. The action was brought by the city and certain adjoining property owners for a permanent injunction against the defendant's erection and maintenance of a gasoline filling station in a district set aside by ordinance for residence purposes. The complaint alleged the deleterious effect the business in question would have upon the neighborhood in lowering property values, increasing highway hazards and causing discomfort to the near-by residents. The findings of the trial court were to the effect that no nuisance was alleged, that highway hazards would not be increased and that the fact that the use would be disagreeable to the neighbors and even seriously impair the value of their property was an insufficient ground for excluding the defendant from using his property for a lawful business.

The Court of Civil Appeals reversed the judgment below, upheld the validity of the zoning ordinance and remanded the case with instructions to issue a permanent injunction. The decision of the highest court of the state reinstating the judgment of the trial court and ordering the complaint dismissed goes upon the broad ground that the police power of the state cannot be exercised to deprive the owner of real property of any use he may wish to make of it, short of the perpetration of a nuisance in law or in fact.

The ordinance in this case, enacted in 1921 under an enabling clause of a home rule charter,

[1] 111 Tex. 350, 235 S. W. 513 (1921).

was similar to one of the city of Dallas, under which the exclusion of a store building in one instance and of a motion picture show in another from a residence district had been declared an unconstitutional attempt to restrict the use of private property. Since that time we understand that the state legislature by a statute passed in 1927 has declared the policy of the state in authorizing comprehensive zoning by cities and villages (Stat. 1928, section 1011a–1011j).

This latest decision indicates that Texas is still in the position with regard to zoning that New Jersey found herself before adopting the constitutional amendment of 1927. While we may commend the consistency of the Texas courts, we cannot but regret that they refuse to follow the more liberal views of those courts which recognize the expansion of the police power to meet new conditions, as the legislature declares the public policy of the state may from time to time require.

✻

Municipal Ownership.—Washington Cities Held to Have Implied Power to Sell Surplus Electric Current for Use Outside Their Limits.—The controversy in Washington over the power of cities to sell to neighboring municipalities the surplus supplies of their electric systems has recently been put to rest by the decision of the supreme court of that state in *Municipal League of Bremmerton* v. *Tacoma*, 6 Pac. (2d) 587. In 1906 in the case of *Farwell* v. *Seattle*, 43 Wash. 141, 86 Pac. 217, the court held that it was beyond the power of the city to extend its water system into the then adjoining city of Ballard and to sell that city a supply of water for its inhabitants. Since that time several unsuccessful attempts have been made to confer upon cities of the state power to sell surplus electricity and water beyond their limits through bills in the legislature and through initiative and referendum measures.

In dismissing the petition of the plaintiff for an injunction against Tacoma and several other cities selling their surplus power at the city line to adjoining municipalities, the court practically affirms that home rule cities whose charters have asserted the power given them by general statute to own and operate public utilities have the implied power to dispose of the surplus incidental to their operation to other cities.[1] This result evidently was the one sought by the plaintiff in bringing the action and the decision of the court is therefore in the nature of a declaratory judgment. It may be noted that the result reached is supported by the great weight of authority in other states, and that in many states statutes not only expressly permit such sales but make them compulsory upon cities having a supply of water or electricity more than sufficient to supply their own needs.[2]

✻

Fiscal Control.—County Budget Commissions—Review of the Florida Statute of 1931.—The county budget law enacted last year by the Florida legislature recently came before the supreme court of that state for construction in the case of *Sparkman* v. *County Budget Commission*, 137 So. 809. This statute provides for the creation of a budget commission of five members in each county of a population of over 150,000. Such commission is given full power to fix and adopt a budget of all receipts and expenditures of any local board, to increase or decrease any item in the estimates submitted by such board, and to determine the amount to be paid or allowed by the county during the ensuing fiscal year by each county officer for salaries of deputies and other expenses of his office. The act was to become operative in 1932 unless the board of county commissioners filed a petition to make the act operative in 1931, whereupon the governor was to immediately appoint a temporary budget commission. A citizen taxpayer of Hillsborough County where the county commissioners had petitioned for the immediate adoption of the act, sought to enjoin the local budget commission upon the ground that the statute was unconstitutional. Although holding that his complaint stated a cause of action, the supreme court took occasion to discuss the constitutionality of the act and to construe its provisions.

The court upholds the power of the legislature to establish such administrative commissions and to provide that the governor may make the temporary appointments, but holds that their powers must be reasonably exercised and that their acts are subject to judicial review in appropriate proceedings. While the act states that the findings of any such commission shall be

[1] To the same effect see City of Tucson v. Sims, 4 Pac. (2d) 673.

[2] See, for example, Cahill's Revised Statutes of Illinois, 1929, ch. 42, section 366, and Chicago v. Town of Cicero, 210 Ill. 290, 71 N. E. 356, sustaining such statutes.

final, due process requires that anyone affected by such administrative action shall be entitled to a safe and adequate review thereof.[1]

✻

Home Rule Powers.—Conflict with General Statutes of the State—California City Denied Power to Establish an Independent Pension System.—In *Frisbee* v. *O'Connor, City Treasurer*, 7 Pac. (2d) 316, the District Court of Appeals, First District, of California holds that the ordinance of the city of Beverly Hills passed in 1928, providing for the creation and operation of an insurance plan and pension fund for its employees, is invalid and that no recovery can be enforced against the city for premiums upon policies issued by the company with which a contract for insurance was placed. The constitution of the state expressly limits the powers of home rule cities to those not in conflict with the general laws. The basis of the decision is that the ordinance conflicts with the statute which purports to create "a police relief, health and pension fund in the several counties, cities and counties, cities and towns of the state" and with a similar statute for firemen. The court not only holds the ordinance invalid so far as it relates to employees of these classes, but further concludes that these general statutes imply an intent on the part of the legislature that home rule cities of the sixth class are not to exercise any power to create pension systems except for policemen and firemen in conformity with the statutory provisions.

This decision goes somewhat further than any other to which our attention has been called in limiting the domain within which home rule cities may act. The principle generally applied that existing powers of home rule cities are impliedly repealed by a statute conferring the entire field of legislation as to a particular matter of state-wide interest is extremely useful in adjusting the conflict between general statutes and provisions of the local charter, but the decision in question seems to carry the implications of this principle to the extreme limit. While it seems clear that as to pensions for policemen and firemen, the general statutes are exclusive, it may well be questioned whether the conclusion that a home rule city may not provide pensions or insurance for other employees is justified. The decision of the supreme court of the state will be awaited with interest.

[1] The opinion recites the pertinent provisions of the statute, which is chapter 14678 of the Acts of 1931.

Irregular Annexations.—De Facto Status—Attack by Taxpayer on Validity of Annexation Proceedings.—In *Jari Co.* v. *Village of Croton-on-Hudson*, 258 N. Y. 303, the Court of Appeals of New York had before it the question whether a landowner could maintain an action to set aside a tax assessment upon the ground that because of irregularities in annexation proceedings the lands assessed were not a part of the village. Among other requirements of the village law of New York is that the original petition for annexation must be signed by a majority of the qualified voters of the outlying territory or by the owners of a majority in value of the property therein. A failure of strict compliance with this condition was set up by the plaintiff.

In deciding that the plaintiff's complaint should not be dismissed, the court in an opinion by Chief Judge Cardozo holds that the statutory provision that no person may bring an action to contest the validity of annexation proceedings after one year is not necessarily conclusive. If within that time the proceedings are questioned by private parties, as in this case, the question resolves itself into an inquiry whether the annexed territory has become de facto a part of the village. To predicate a de facto status not only must the proceeding be under color of law, but a user of the corporate franchises must be established. Unless these facts are shown, the rule against collateral attack has no application.[2] The court concludes that the challenge of the taxpayer in the instant case is timely and that the complaint states a good cause of action.

The decision in the above case so far as it relates to annexation proceedings may be compared with that recently handed down by the Supreme Court of Pennsylvania, *In re Baldwin Township*, 158 Atl. 316, in which it was held that the statute requiring the consent of the state council of education as a condition precedent to a judgment of annexation imposes an absolute bar to the validity of the proceedings and that in the absence of such approval no valid annexation can be perfected.

✻

Eminent Domain.—Condemnation of Land for Markets Conveys the Entire Fee.—A repercussion from the recent decision of the Court of Errors and Appeals of New Jersey, hold-

[2] The distinction is well set forth in two Illinois cases: People v. McKinner, 277 Ill. 342, 115 N. E. 526, and People v. Hansen, 276 Ill. 204, 114 N. E. 596.

ing that the State Highway Commission could condemn for highway purposes only an easement for public highway use, leaving the fee in the former owner,[1] may be noted in a series of related decisions handed down by the same court on February 1, 1932, of which *Carroll* v. *City of Newark*, 158 Atl. 458, is given the leading consideration. The city in the instant case had abandoned the use of certain lands condemned for market purposes and devoted them to park purposes. The executors of the former owner sued to recover possession upon the ground that the city had acquired only an easement or at most a fee determinable upon its abandonment of the special use. This court holds that, where the statute is silent as to the extent of property rights to be acquired by condemnation a reasonable construction of the statute must be determined by a consideration of the purposes for which the power is to be exercised and that power to condemn land for markets implies the power to appropriate all the property rights of the previous owner.

The decision is supported by the great weight of authority. Where the statute authorizing condemnation is silent as to the property rights that may be taken, the courts must look to the general legislative intent as shown by the statutes. As Justice Holmes remarked in a leading Massachusetts case: "There are no sacramental words which must be used in a statutory power to take and hold lands in order to give a right to take lands in fee." [2]

⚜

Excess Condemnation in Ohio.—Limited in Ohio to the Amount Actually Necessary to Carry Out the Improvement.—The Supreme Court of Ohio has again construed the state constitutional amendment providing for excess condemnation to limit the amount of land that may be taken to that reasonably necessary to carry through an improvement. In *City of East Cleveland* v. *Nau*, 179 N. E. 187, the city sought to condemn all of the defendant's lot, 130 feet in depth, in connection with a street widening improvement, claiming that the excess over the part actually to be brought within the street was necessary to establish a proper grade back from the sidewalk. The slope specified in the plan was three-eighths of an inch per foot of horizontal extent. The supreme court affirms the finding of the lower courts that such a specification was unreasonable and arbitrary and therefore that the taking of the excess lands was unconstitutional. The effect of the holding is that a city seeking to condemn excess property is limited to its need for the improvement for which the property is sought to be condemned. Not only must the municipality define specifically the purpose of the appropriation, but it must also sustain such requirement by adequate proof of necessity. In other words, it does not appear that the Ohio constitutional amendment has enlarged the general power a municipality would have under statutory authority to take the additional property required to put through a public improvement and to dispose of the excess after the improvement is finished.[3]

⚜

Minimum Rates.—Public Utilities—Limitations upon the Power of State Commissions to Regulate Rates.—By an order handed down February 29, 1932, the Supreme Court of the United States affirmed the injunction order of the District Court, Montana, in *Great Northern Utilities Co.* v. *Public Service Commission*, 52 Fed. (2d) 802. In this case the unique question was involved whether a state utilities commission can prescribe minimum rates below which the utility may not sell its service to consumers. The general power of the state commission to fix minimum rates had been upheld by the Supreme Court of Montana in *Great Northern Utilities Company* v. *Public Service Commission*, 88 Mont. 180, 293 Pac. 294, but in its petition before the federal court the company contended that this power is less extensive than that of the Interstate Commerce Commission over the rates of interstate carriers and that the sole objective of the regulation of local public utilities was to prevent the imposition of rates unreasonably high, so as to protect the public. The District Court rejected this contention and held that the power of the state was unreasonably exercised, where as in the case at bar two competitive utilities have been given franchises to sell their services in the same locality and it appears that the effect of enforcing a minimum rate would be to destroy

[1] Frelinghuysen v. State Highway Commission, 107 N. J. L. 218, 152 Atl. 97, noted in the issue of September, 1931.

[2] City of Newton v. Perry, 163 Mass. 319, 39 N. E. 1032. See, also, Driscoll v. New Haven, 75 Conn. 92, 52 Atl. 618.

[3] See Note on New Orleans Land Co. v. Board of Levee Commissioners, 132 So. 121, reported in the April, 1931, number of this Review and cases cited therein.

the right of one of them "to fight to a finish the battle for financial life."

In affirming the interlocutory injunction, the Supreme Court states that its order is to be without prejudice to the consideration and determination at final hearing of all questions of law and fact, including the question of the reasonableness in the circumstances disclosed of the order which is the subject of the suit.

⚜

Chicago's Forest Preserve.—Title to Real Property Purchased Without Legislative Authority.—The question is often raised as to the effect upon title to lands purchased by a municipal corporation under a general power to acquire real estate for general municipal purposes, where no authority exists to acquire the land for the particular use. This question was before the Supreme Court of Illinois in *Mills* v. *Forest Preserve District of Cook County*, 178 N. E. 126, in which the plaintiff sought a decree to have lands granted by him reconveyed upon tendering back the purchase price on the ground that the acquisition of the land had been beyond the powers of the corporation. The facts supported the contention, which was admitted by the defendant, that the district was without power to acquire the lands in question in the manner which had been followed.

In holding that the petitioner had no standing in a court of equity for the relief demanded, the court relied upon the general rule that if the acquisition of lands is within the general powers of the corporation, no one can question the validity of the title thus acquired except the state itself. The opinion of the court is especially valuable for its review of the leading decisions of the courts of the several states upon this point. The use of the term ultra vires in this connection is unfortunate as it is applied to include acts invalid because of special charter limitations upon the purposes and procedure governing the exercise of a general power, as well as those acts clearly beyond any power conferred upon the municipality for any purposes.

⚜

Police Power.—Estoppel of City to Revoke Permit Issued Under a Mistake of Fact.—In *District of Columbia* v. *Cahill*, 54 Fed. (2d) 453, the Court of Appeals holds that the action of the district commissioners in ordering the revocation of a permit for a garage, after the defendant had relied upon a permit issued by the building inspector and had expended several thousand dollars in improvements, was void and that the owner was entitled to a continuance of the use of the building in the restricted district. The inspector had approved the application as one for continuing use, but after the improvements were made the commissioners, acting upon a protest of neighboring owners, found that the prior use had never been valid and that the permit had been issued under a mistake of fact.

The court applies the principle that municipal corporations are subject to estoppel in pais where justice and good faith require. The court says: "In our opinion the instant case is one where under all the circumstances to assert a supposed public right would be to encourage and promote a wrong, whereby a party acting in good faith under affirmative acts of a municipal corporation, and making expensive and permanent improvements in reliance thereon, would unjustly and inequitably be deprived of the rights which the corporation has granted to him."[1]

[1] See, also, People v. Rock Island, 215 Ill. 488, 74 N. C. 437; Hagerstown v. Railway Co., 123 Md. 183, 91 Atl. 170.

PUBLIC UTILITIES

EDITED BY JOHN BAUER, *Director, American Public Utilities Bureau*

"Managing" Philadelphia Rapid Transit.—For many years the achievements of the so-called "Mitten management" of the Philadelphia Rapid Transit Company had been broadcast throughout the land. Its success in dealing with employees was particularly extolled. Its system of employee-ownership and employee-banking received unbounded praise. In the meanwhile, excessive payments to the management, manipulation for profit to insiders, financial extravagance, and the rankest of improvidence were covered up through clever organization. It obtained complete control for the small management group with little or no actual investment in the company.

The real facts of the Mitten régime were made public through an action brought by the city of Philadelphia for an adjudication of its rights under its 1907 contract with the Philadelphia Rapid Transit Company. Judge Harry S. McDevitt of the Court of Common Pleas of the County of Philadelphia, made in full detail the findings of fact, discussed the points at issue, and presented the conclusions of law. His findings stand as a sweeping condemnation of the Mitten management.

Thomas E. Mitten first entered into a management contract with the Philadelphia Rapid Transit Company in 1911. He received $158,000 per year for the supervision and operation of the company, and for the payment of expert advisers and office expenses. This contract continued up to March 31, 1924. At this time the agreement was shifted to the "Mitten Management, Inc.," a $10,000 Delaware corporation. After several modifications, the compensation was fixed, in March, 1926, at 4 per cent of the gross revenues of the system, not only the Philadelphia Rapid Transit Company itself, but all of its subsidiaries. This included taxicab companies and all the properties acquired through Mitten efforts.

The management fee was thus increased from $158,000 per year to about $2,400,000 a year. In the meanwhile, however, the salaries of general officers, apart from the management fees, increased from $220,023 for the year ending June 30, 1924, to $331,547 four years later. Besides, there were special outside experts and consultants to assist the "management" and paid by the company.

The inside group, through interallied companies, had succeeded in obtaining the proxy of the bulk of the stock of the Philadelphia Rapid Transit Company. Through this control it was able to shift about officers to suit its own purposes. The plans of the "management" as adopted at early morning breakfasts in Mr. Mitten's apartment, were adopted by the same group under different legal set-ups at successive meetings during the day, and were finally approved by the stockholders through the exercise of proxies.

Under the 1907 contract, the city had granted specific rights to the company to enable it to carry on its operation and financial needs more satisfactorily. It had also freed the company from excise taxes, and provided that the city shall share 50–50 in all net returns of the company above 6 per cent on the paid-in capital stock. The company was required to file annual reports with the comptroller whose duty it was to examine the accounts and records to ascertain their correctness. All major decisions as to en-

largement of properties, security issues and policies, required the approval of the city council.

Following the entrenchment of the Mitten management, the company discontinued filing the annual reports with the comptroller, and refused the city access to its books and records. Only after a special order of the court, were the records made available for a thorough investigation through which the facts were disclosed as found by Judge McDevitt.

The city had a definite financial interest in the economical management of the company. It was entitled to a voice in the control through representation on the board of directors, through annual reports and audits of the accounts, and through the special approvals by the city council. In all these matters its rights were ignored, and the "management," through its ramifications, carried out its own policies. And there were no profits for the city, and not 6 per cent for the stockholders.

The total burdens placed upon the company included not only the management fees, which were rigged upward from $158,000 to $2,400,000 a year, but also deals in real estate and leases, the purchase of taxicab properties at exorbitant prices, and fruitless expeditions in other enterprises which had no reasonable connection with the purposes of the Philadelphia Rapid Transit Company. For none of these undertakings had the approval of the city been obtained.

The total burdens and costs resulted in aggregate losses of over $15,000,000 to the company. The court found that the company was not insolvent, but it appointed receivers to operate the property, cancel the "management" agreement, and obtain restitution of funds.

This is a glaring instance of what "management" may undertake and achieve if not kept under adequate and definite public control. The facts were well shrouded, and came to light only through court proceedings. They give a notion of what the management activities may have been in the hundreds of other instances throughout the country where there has been no recourse to the courts. The investigation ordered by the House of Representatives into public utility ownership and control, should not fail to follow up the ramification of "management."

*

Questions Regarding Kansas City Street Railway Purchase.—In the last number, we included an article by Edward White describing and briefly discussing the proposed municipal purchase of the Kansas City street railways. The proposal is unique in that it provides for the acquisition of the capital stock instead of the physical property. It raises distinct legal issues as well as questions as to basic desirability and justification. The following is a brief statement by Walter Matscheck who has been close to the Kansas City street railway problem for many years, and who, of course, has a disinterested and public point of view:

"In the public utilities section of the REVIEW for March, there appeared a note concerning a proposed ordinance for the purchase of street railways in Kansas City.

"The note stated that the people of Kansas City are to vote on this ordinance April 12. Whether this will be done is not yet decided. The ordinance is an initiated ordinance promoted by Edward White and submitted to the council under provisions of the charter with a sufficient number of signatures to the petition to require the calling of an election. The council refused to submit the ordinance on the grounds that it was unconstitutional. The promoters of the ordinance have requested the state supreme court to order the council to call the election. Arguments in this suit are to begin March 15.

"The principal constitutional objection raised by the city is that there is no authority in charter or law for the condemnation of the stock of any utility, as is proposed in this ordinance.

"There are other questions which might be raised also. One is whether there is authority in the charter to pay for stock so condemned by a special assessment against real estate. Another is whether the payment of interest and principal on outstanding bonds, which would be an obligation of the city under the ordinance, can be specially assessed. A third is whether a special assessment levied on a district which includes all the land in the city is in fact a special assessment. A fourth relates to the naming of the board of public utility within the ordinance itself. Still other questions to be raised include the relationship of the street railways in Kansas City, Kansas, which are part of the system as now owned.

"The supreme court is not asked to decide these questions now but merely to determine whether or not the city council must call an election on the ordinance. If the court decides that an election must be held, it seems that there will be enough constitutional questions to keep Kansas City busy for some time to come, if the ordinance is approved by the people.

"I have not raised here the questions of the merits of the ordinance itself or the method of acquisition and payment contemplated."

*

Is Regulation Hopeless?—Among progressive political and economic thinkers, the conviction has been spreading rapidly that regulation of public utilities is hopeless for the purpose of protecting and promoting the public interest.

In the February number of the REVIEW we published an exchange of letters with George L. Record on the efficiency of regulation. He holds that the inherent profits of monopoly inevitably bring the regulators under the control of the assumed-to-be regulated. Much the same view has been recently adopted officially as a part of the four-year political program of the League for Independent Political Action. Its position is as follows:

POWER AND PUBLIC UTILITIES

Private ownership of the power industry and public utilities in the United States has failed properly to serve the public, and resulted in evils intolerable in a democracy. Regulation has failed to protect the public interest and has proved a source of corruption of government, because the profits of the power monopoly and other utility companies are so great as to form an irresistible incentive for breaking down and controlling regulation and for undermining the integrity of government. The public utility companies have established the greatest racket in the world, taking each year from the pockets of American workers at least $500,000,000 through unfair charges and excess rates. Experience has shown that regulation cannot be relied upon to protect the public. In every state of the Union but four the public utility companies are being controlled by them. The Federal Power Commission has been a disgrace to the government.

We propose the following plan of action:

Federal Operation of Muscle Shoals. Immediate federal legislation providing for public ownership and operation of Muscle Shoals and other federal power projects.

Public Ownership. Federal and state legislation to carry out a program of public ownership and operation of power and public utilities, including immediate legislation to eliminate all present legal restrictions thereto.

Natural Resources. Legislation providing for the control of coal, oil and railroads in the public interest, looking forward to eventual public ownership.

Railroads. The public should take over the railroads and operate them, rather than subsidize them with a dole.

NOT HAIR-BRAINED

Let no one think that this declaration represents hair-brained radicals. The entire four-year program was drawn up by different groups of specialists. Each group consisted of intellectual leaders in the particular field. In the power and utility group, every participant had long experience with regulation, and had made critical and constructive analysis of his experience. The discussion was liberal in the best sense of the word. Alternatives, with what they involved, were dispassionately considered. The conclusion was all but unanimous, that regulation has been a failure, that it is worse than useless, that it cannot be reconstructed on a satisfactory public basis, that the facts should be frankly faced, and that the united efforts of progressives should be concentrated in the establishment of public ownership and operation.

We had been invited to join the utility group, and, frankly, we stood alone in supporting the rehabilitation of regulation as a part of a broad utility program. We agreed, of course, that regulation has been far from satisfactory, that it not only has not protected the public as had been expected, but that it has been a source of official corruption, with extremely widespread ramification. We were told, and clearly realize, that next to the illicit liquor traffic, the utilities in their effort to make regulation innocuous, easily stand foremost as an insidious force. They have sought in devious ways to influence public opinion, to restrain legislation in the public interest, to make sure that no unfriendly officials are elected or appointed (commissions, governors, legislators, and particularly judges, not overlooking the humbler ranks), and to ward off any action specifically calculated in the public interest.

Just let anybody who has been around with his eyes, ears and mind open, deny these sweeping charges! We don't. We experience their essential correctness almost constantly. Yet, these are matters which are easily subject to exaggeration. I do not agree with a utility friend of mine who boasted that "of course, we control all the men on the commissions, but the public doesn't know it." The public happens to surmise a lot. But, at that, the control by the regulated is not so complete as their efforts and the appearance indicate. I have come in contact with some pretty terrible commissioners and rank conditions otherwise. I have smarted under obvious utility influence. My experience, nevertheless, is that most of the commissioners—the great majority—are sincere and intelligent, and are doing as well as can be reasonably ex-

pected under the handicaps with which they are working.

CAN THE SYSTEM BE CHANGED?

Regulation is a human institution, subject to human limitations. So is public ownership and operation. We believe, of course, that the various existing legal restraints against public plants, are archaic and should be abolished. We have presented in this department notable instances of highly successful public operation. But, that does not prove that all public operation has been successful, and that private operation should be universally replaced. Public ownership is not a panacea. It does not automatically end graft and other corruption. Its universal establishment would have to be attended by equally universal political regeneration, or it would probably be as disappointing as regulation.

The failure of regulation, in our judgment, has been due much more to the inadequacy of system than to direct corruptive influences. As to cause and effect, it is primarily the deficiency of the system that has prompted the insidious influences, not that the evil influences have produced the breakdown of the system. Like causal relations appear throughout in our political and economic structures. The success of public ownership will depend upon the system and administration by state and local governments. It will require as far reaching reconstruction of policy and change in standards and machinery of administration, as will the revision of regulation to make it effective from the public standpoint.

The fact, however, is that regulation is far from satisfactory, and it needs fundamental revision as to system and methods of administration. With such revision, private ownership and regulation furnish at least a practical alternative and an opportunity to test more completely the relative advantages of the two systems. This is particularly desirable since the bulk of the properties are now owned and operated privately, and their replacement could be obtained only at enormous political effort and at high economic cost.

But, if the efforts at revision are blocked, if the criticisms of the present system are pooh-poohed, and if the utilities continue the course they have pursued since the war, there is no alternative for honest and intelligent citizens but to espouse the program announced by the League for Independent Political Action. So far the companies have succeeded mostly in preventing any substantial reconstruction. They will doubtless continue in what appears to be shortsighted policy for them. Yet, it is possible that reasonable revision can be obtained notwithstanding the companies and their cohorts of defenders.

Some progress has been made. Last year important changes were made in Wisconsin, both in the law and in the personnel of the commission. The effect has been instantaneous. The new commission has clicked in the manner of the first commission when the idea was new. In South Carolina, the Power Rate Investigating Committee reported in January to the legislature and the governor and has taken firm and progressive ground for effective regulation. It points particularly to a comprehensive state power policy and to a systematic program of rural electrification.

Regulation is being discussed widely by intelligent groups. Important changes are certain to be made. It probably will not be abandoned as a policy so long as private operation continues. A specially important conference for prudential discussion of regulation has been called for April 8 and 9 in New York, under the chairmanship of Morris L. Cooke. The object will be to discuss the problems with an open mind. It will be based, however, on the realization that the existing properties are mostly owned and operated by private companies, and will probably continue on that status for an indefinite period to come. The large question, therefore, to be considered is, how can regulation be reconstructed so as to preserve more representatively the public interest so long as private ownership continues? We shall present a résumé of the conference in the next number of the REVIEW.

MUNICIPAL ACTIVITIES ABROAD

EDITED BY ROWLAND A. EGGER · *Virginia Bureau of Public Administration*

UNIVERSITY TRAINING OF MUNICIPAL OFFICIALS IN FRANCE[1]

BY HAZEL M. SKELHORNE

Attempts to improve the conditions of recruitment and advancement of local government employees in France by legislative enactment of the central government, and to foster professional training on the part of the ministry of the interior have both been conspicuous failures. However, in the larger metropolitan centers, the increasing scope and intricacy of the public services have made the evils resulting from the lack of trained administrators so apparent and so serious that courses in public administration have been introduced at the large universities at the instigation of the municipalities. The outstanding achievement in this direction is the National School of Municipal Administration at the University of Paris.

At the present time this movement is largely confined to the urban districts and shows little tendency to spread to the rural communes, where both communal administration and communal employees are still largely at the mercy of politics and caprice, and the favor of the mayor is the first and last qualification for office.

The rural communes find more or less satisfactory a system of instructor-town-clerks, officers of the state who move from town to town filling the office of town clerk and giving a routine course of instruction in the elementary principles of constitutional, public, administrative and civil law. The absence of large public services in the small commune and the simplicity of municipal life make it possible to use this method without serious difficulty, but as it is extended to the larger communes the breakdown becomes more and more complete.

NEW COURSES BEING OFFERED

This is the situation which lead to the establishment in 1920 by the city of Lyon of a preparatory course of instruction in the duties of secretary and town clerk. This course offers general instruction in municipal law and communal finance. The majority of candidates accepted for examination for the parochial offices of Lyon and of the Lyonnaise communes have taken it.

At Nancy the Faculty of Law has taken the initiative in organizing a course exclusively for public administration employees. In 1922 the faculty sanctioned this training by conferring a certificate after the passing of written and oral examinations. The assistant-secretary-general of the city of Nancy conducts a one hour a week course on administrative organization and the secretary-general gives conferences on subjects of administration of his own choosing.

In Nantes, on the initiative of the municipality, the Free School of Law and Notariat has inaugurated courses in constitutional and administrative law exclusively for communal employees. These courses are taught by the head of the legal department of the city of Nantes, and the city attaches a major interest to the possession of this certificate for the directorship of its personnel. No employee can be admitted to the office of chief of a department

[1] This is a summary of certain sections of the report prepared by the French Union of Municipalities for the London Congress of this year.

unless he has a certificate in administrative studies from the School of Law, the only exception being made in the case of employees registered in the university and working for a degree. In order to make these courses available to the town clerks of small cities and neighboring rural communes a summer course has been inaugurated, inexpensive living arrangements have been provided, and during the period of residence in Nantes, the city of Nantes employs the communal employees taking the course as temporary assistants in its services and pays them by the day.

Under the patronage and with the financial assistance of the general council of the North (including a subsidy of 20,000 francs annually), conferences on the study of problems of local administration have recently been organized by the Faculty of Law of Lille, in coöperation with the prefecture of the North. These courses have for their object the organization of a trained, professional staff of municipal officers for the extensive district of the North. They are actually attended by about sixty per cent of the employees of the city.

The Faculty of Law of Montpellier has also organized a series of annual conferences on administrative and financial problems, and the latest movement in this direction comes from the Union of Communal Employees of the three departments of the Lower-Rhine, the Upper-Rhine and the Moselle. After securing the creation by the general council of the Lower-Rhine of a special commission charged with the duty of organizing the professional training of municipal employees in the departments of local law, they submitted to this commission the following concrete proposals: (1) The creation of an autonomous, interdepartmental school of instruction to be combined with the Faculty of Law of Strasbourg; (2) admission to this institution of communal employees in office, and of candidates planning to enter the communal administration; (3) subsidization of the institution by the three departments with optional contributions from the communes; (4) the creation of departmental scholarships; and (5) payment by the communes of the expenses for matriculation, examinations, library fees and tuition of employees taking the course of instruction.

These are the views expressed by the various groups of municipal employees. The commission confined itself to submitting to the prefect of the Lower-Rhine a proposal for the establishment in the University of Strasbourg of a school of municipal administration to which municipal employees in office and all other persons aged at least sixteen years would be eligible for admission. The instruction of the school would include a general elementary course of sixty lessons to be completed in two academic years and a special advanced course with practical application also comprising two academic years. The studies of each year of the elementary course would be acknowledged by a certificate and a third certificate would be equivalent to a university degree. The instruction, given Saturday afternoon, would be entrusted to professors of the Faculty of Law for the general course, and for the special course and the practical conferences to the chief officials of the local administrations.

THE INSTITUTE OF URBANISM

The most extensive program is found in the system of professional education and training organized in the Parisian district, where the Institute of Urbanism with its National School of Municipal Administration has been established at the University of Paris. According to an announcement of the ministry of the interior it is hoped that this will in time become a center of professional training for municipal employees of the entire country.

The Institute of Urbanism was founded in 1919 under the title of School of Advanced Studies in Urban Problems. It was reorganized under its present name at the University of Paris in 1924 and its financial condition guaranteed by an annual donation from the department of the Seine as well as by the profits of its right of enrollment and examination. It includes two establishments: The Institute of Urbanism proper, and since the end of 1929, the National School of Municipal Administration which, in fact, has been in operation since 1922 under the name of Department of Administrative Training.

The Institute of Urbanism admits students offering a general educational background (a bachelor's degree in secondary instruction, or a diploma of advanced primary instruction, a certificate in administrative or financial studies conferred by the Faculty of Law, or certificates from the National School of Municipal Administration). Equivalent foreign diplomas are accepted. The instruction includes four sessions corresponding to two years of study and is divided into five sections, including in each a foundation course and supplementary lectures, a

follows: (1) Evolution of cities; (2) social organization of cities; (3) administrative organization of cities, including the study of solutions to problems which affect the life of urban centers, and the functioning of municipal public services; (4) economic organization of cities; (5) metropolitan planning, architecture (the art and technique of construction). The course of instruction of the Institute, which comprises a combination of studies in municipal organization and the natural evolution of urban phenomena, tends to place those who complete it, either in the architectural field or in the field of municipal engineering, in administrative positions in important centers, or at least in the line of advancement to such positions.

The theoretical courses take place at six o'clock in the evening, thus enabling a student to carry on a profession while completing his studies. No correspondence course is offered except for special training open to students not living in Paris who can occasionally obtain exemption from the oral course. These students receive outlines of the courses and practical problems to work, and must pass examinations, which are so arranged as to enable them to take them during a short residence in Paris. These examinations cover the subjects taught during each two years of instruction. A third year is devoted to the composition of a thesis in which the student demonstrates his ability in the line of research work.

Candidates for admission must be eighteen years of age, and upon completion of the course of study receive the degree of Special Studies in Urbanism.

Already some of the secretaries of cities of the province, of large cities of the Parisian precincts, and certain directors of municipal services, are graduates of the Institute, where they have received, it would seem, a splendid training in problems of municipal administration.

A degree from the Institute of Urbanism is apparently equivalent to a university degree. It does not give directly the right to appointment to offices of the city of Paris and of the department of the Seine, but it confers the right of admission to examination. Graduate students have attempted to secure for graduates of the Institute of Urbanism a right of priority for appointment to the office of city clerk in the important municipalities. This has been secured in communal ordinances adopted by several suburban communes in the Parisian region. It has not been realized throughout the country at large where, as pointed out above, the attempt at scientific regulation of training and recruitment is still vague and ineffective and the mayor is left complete freedom in the choice of department heads and personnel. The latter condition explains why, of the non-resident students attracted by the Institute of Urbanism, the number of French provincial students is very limited.

SCHOOL OF ADMINISTRATIVE TRAINING

The School of Administrative Training, which is called the National School of Municipal Administration affiliated with the Institute of Urbanism, offers a preparatory training for the advanced course of instruction offered in the Institute of Urbanism and also assures to municipal employees and candidates for municipal office such instruction as practical experience without a general educational background would never give them. The training is simple, concrete and free from theoretical abstruseness, adhering closely to the lines of practical administration, the efficient execution of which is the ultimate aim and object of the instruction.

A certificate from this first section signifies the satisfactory completion in the National School of Municipal Administration of sixty lessons, divided into four sessions, each consisting of an elementary course in administration and civil law. Graduates, consisting mainly of young men of eighteen or nineteen years of age, are eligible to subordinate positions in the city government, and to admission to the Institute of Urbanism, or they may continue their course in the National School of Municipal Administration, entering the second and final section. This section offers a detailed, practical and applied course of study in the principal problems of local administration. It requires practical work on the budgets and administrative accounting methods of the communes. This second section has for its particular object the training of employees seeking to attain the higher municipal offices. It confers the diploma of the National School of Municipal Administration.

All the courses are given at six o'clock in the evening at the Faculty of Law of Paris, thus allowing municipal employees to perform their duties while obtaining professional training. Moreover, a special correspondence course has been arranged for the benefit of provincial students. These students receive outlines of the course and are required to write out exercises

which are corrected and annotated. The written and oral examinations are held in Paris, but the board of examiners also goes to the cities where the number of candidates for examination justifies such a journey.

The annual library and matriculation charges (100 francs a year), and the miscellaneous expenses incidental to attending courses are paid by the students. An association of graduate students, recently organized, is working to obtain from the mayors the establishment of scholarships, and in general the recognition in the statutes governing the communal personnel of a right of priority in obtaining office for graduates of the National School of Municipal Administration.

Certain municipalities have undertaken to finance the education of their employees. Others have offered a special gratuity, adding it to the salary of those of their employees registered in the School. Still others have exempted the graduates of the School from the qualifying examinations required by their local ordinances for accession to certain grades of office. This is the case in the suburban communes of the Seine.

EXAMINATIONS—CLASSIFICATION

Of the eighty suburban communes of the department of the Seine, about half have adopted for the recruitment and advancement of their personnel a unique statute creating an intercommunal board of examinations and an intercommunal board charged with the interpretation of the statute. In these communes, which are largely composed of cities or metropolitan centers, the communal administrative offices are hierarchized and divided into grades—higher, medium and lower—which are to be found, with slight variations of nomenclature, in all the communal administrations whose importance warrants a classification of services and a division of work. The lower grade includes copying-clerks or bookkeepers, clerical workers and stenographers; the next includes the chief clerks or secretaries of the departments, who plan the work of the department, prepare reports, and in general oversee and direct the service with which they are entrusted subject to supervision by the chiefs and assistant heads of the department; and at the top of the hierarchy is the secretary or secretary-general of the city, directly responsible to the municipality and assisted in the large cities by an assistant-secretary-general.

To obtain an office anywhere in the hierarchy it is necessary to be enrolled on an eligible list for the particular office, which is filed in the office of the town clerk. Enrollment on this list depends upon the decision of a board of examiners presided over by a delegate of the prefect of the Seine, assisted by three mayors and two representatives of the communal personnel of the grade next higher than that to which the examination is open. The representatives of the personnel are two secretaries of the town, and the other delegate is an officer of the prefecture of the Seine of the grade of department head or a superior grade.

The candidates for the office of clerk must have a general background of elementary education and have some special knowledge of administrative law, civil law, and principles of public accounting. Candidates for the headships of departments are enrolled in office without examination if they hold a certificate in elementary studies and a certificate from the National School of Municipal Administration. The elementary certificate may be acquired at from sixteen to seventeen years of age, after which it requires two years to graduate from the National School of Municipal Administration. Therefore, accession to the grade of clerk could scarcely occur under twenty years of age. This is moreover the age required to become a candidate for the office. Candidates who hold only the elementary certificate must pass examinations giving proof of their administrative knowledge. Examinations are held as needed. The date is set so as to permit a candidate to present himself successively, at the end of each period of two years, for examination admitting him to a superior grade.

Graduates of the National School of Municipal Administration having for five years held a major office in a municipal administration may assume office without examination if selected from the eligible list for the office of secretary or chief clerk.

In order to be enrolled on the list of those eligible for the office of under-secretary of a department, the candidates must be at least twenty-five years of age, have held for more than two years an administrative or technical office in a commune adhering to the statute, and submit to an examination including written reports and oral examinations on questions of administrative law, financial law, and civil law. The degree conferred by the Institute of Urbanism gives exemption from this examination.

NOTES AND EVENTS

Cleveland's New Mayor.—For the first time in eight years the chief executive of Cleveland is a mayor elected by a direct vote of the people. The new executive, Ray T. Miller, was nominated at a run off primary on January 12; elected on February 16; and installed in office on February 20 in accordance with the provisions of the new mayor-ward-council charter adopted last November in place of the city manager charter which had been in operation since 1923.

Mayor Miller, a Democrat and an attorney, is 39 years of age. He was elected county prosecutor, his first public office, in 1928 and was reëlected in 1930. During the period of his service as prosecutor he was almost constantly before the public in the prosecution of cases involving the malfeasance of public officials (mostly Republicans), whose cases he fought vigorously with the result that two former councilmen, as well as the son of one of them, were sent to the penitentiary.

While it is much too early to draw any conclusions about the new administration, still a few observations in the way things are starting off under the new régime may not be amiss.

The first task confronting the new mayor was the selection of his official family which includes the directors of the seven city departments, a street railway commissioner and the secretary to the mayor. Of this number, only the appointment of the traction commissioner is subject to the approval of the city council. The official family named by the new chief executive is conspicuous in the absence of party veterans; in the comparative youth of the individual members; and in the general lack of experience and training for the particular posts to which they were assigned. The group includes four attorneys (two of whom had served under Miller in the prosecutor's office), a real estate operator and former councilman, an engineer, a member of the board of elections (a woman), an investment house employee, and the secretary of the Democratic campaign committee. Although this brief summary does not tell the whole story of the personal qualifications of the new officials, still it is sufficient to indicate the tendency toward political preferment which seemed to dominate the mayor's selection.

Though more than a month has passed since the new administration took office, the city's budget for 1932 is still waiting for final action. This is in spite of the fact that Acting Mayor Burton had prepared the preliminary budget accompanied by a detailed statement of the problem confronting the city this year.

The only aggressive activity of the administration thus far has been a determined effort to clean house of the employees in every municipal department and office in the city service. Many employees with a Republican leaning have either been laid off or dismissed. Every city employee, not definitely known to be a Democrat, is now trembling on the job expecting to be the next victim of the brutal ax of the political spoilsmen. Numerous division heads and other important public employees were asked to resign during the first few days of the new régime; but almost immediately thereafter were urged to stay on for an indefinite period until their successors might be selected. Even now the number of changes in personnel which have been made has tended to disrupt the fairly smooth running municipal machinery of Cleveland. Several discharged employees whose service to the city has covered many years and who are under the classified civil service have instigated legal proceedings in an effort to regain their positions.

No plan of administrative policy or program of

operation has yet been set forth or even promised by the mayor or the administration.

SHERWOOD L. REEDER.

*

Chicago Unraveling Fiscal Snarl.—Chicago is slowly unraveling the fiscal snarl which has brought its local governments to the verge of complete standstill. The main causes of the present predicament have already been reported fully in earlier issues of the REVIEW. At the present writing the assessing machinery of Cook County has been reorganized and an honest, capable and impartial assessor placed in full charge. Legislative authorization is being obtained through a special session of the Illinois general assembly, meeting intermittently since November 5, to bridge the gap until the tax gathering machinery can be made to function normally again. Vigorous efforts are also being made to force the various taxing bodies to reduce current budgets so that the aggregate expenditures of all governments in Cook County in 1932 will fall within sharply decreasing tax collections.

The reorganization of the assessing machinery was item one on the legislative program of the governor's tax conference. The conference proposed the appointment of an assessor and of two reviewers in place of the former elective boards. Practically, the new offices were to displace five Democratic members of the board of assessors, three Republican reviewers and thirty Republican township assessors, all of whom were elective. But the change called upon a Republican controlled assembly to legislate several Republicans out of office and to abolish a system which had been valuable to both parties; also to empower the Democratic president of the board of Cook County commissioners to fill the new offices. The plan was violently opposed by the vested political interests of both parties. Only after tremendous public opinion and pressure was brought to bear and a compromise measure was offered, did the legislature act. The compromise provided for the appointment of the assessor and reviewers now and for their election after 1934; also for the retention of the township assessors as deputies. The governor and county board president jointly name the assessor and each appoints a reviewer.

J. L. Jacobs, who for many years has acted as efficiency adviser to Cook County, the city of Chicago, and other governments, has been appointed assessor. His task obviously is one of extreme difficulty and great responsibility. In local parlance, he's "on the spot." Observers are highly confident that, despite Illinois' antiquated revenue laws, he will put the assessing system on a basis where it will produce a tax roll which will stand up in court, and at the same time be one of the primary factors in reëstablishing confidence in the revenue-raising machinery, both on the part of the taxpaying public and the sources of credit upon which the local governments must depend for funds until normal fiscal operations are reëstablished.

Other major measures recommended by the governor's tax conference are a tax on personal incomes, a tax on manufactured tobacco and increased license fees on vehicles and tractors. Revenues from these sources are designed to relieve in part the tax burden now borne by real estate.

The legislature has also adopted a number of minor measures, but still has the major share of its task to perform. An eight-week intermission was taken until after the April 12 primary to permit the members to conduct their renomination campaigns and also to facilitate agreement upon important measures still pending.

A circumstance, which seemed to foreshadow a breakdown of the entire taxing system, was the decision of County Judge E. K. Jarecki invalidating the tax levies of 1928, and by inference the levies of 1929 and 1930, on the ground that vast amounts of personal property, which under the law must be taxed on the same basis as real estate, were fraudulently omitted from the tax rolls. This case is now on appeal before the Illinois supreme court, and will be re-argued during the April term. The decision sharply focused the legislature's attention on the need for a revamping of the assessing system.

An important element in the local situation has been the decline in tax payments. An average of eighty-three per cent of the 1928 taxes was collected; the average for 1929 dropped to sixty-eight per cent, even though these taxes have been in collection for more than a year. If the payments on 1930 taxes, now in process of collection, continue to decline it is estimated that only fifty-three per cent of the amount due will be realized. With more than two-thirds of a billion dollars in tax anticipation warrants now outstanding, the governments have difficulty in obtaining additional credit.

The growing delinquency in tax payments is diagnosed as due in part to the depression, in part to the belief that the taxes represent unfair

valuations, and also in part as a protest against corruption, waste, and inefficiency in the local governments.

Vigorous efforts are being made under the leadership of Mayor Anton J. Cermak and his advisers, acting through citizens' committees, to reëstablish the credit of the local governments and to finance the governments in the emergency. Various expedients have been adopted to effect reductions in operating budgets, including whole sale dismissals of employees in the city and county services, part-time and staggered employment schedules and five days' pay for six days' work. The board of education, however, dominated by a holdover Thompson majority, has made political capital out of the situation and has adopted a budget which represents all activities as "cut to the bone," but is still several million dollars above the amount of revenue which it is predicted will be available during the current year. The board now owes thirty-five million dollars in overdue payrolls and its tax warrants are quoted at 75 bid and 80 asked, with the prediction that the price will go lower.

✻

American Delegation to International Congress of Cities.—The Fifth International Congress of Local Authorities is to be held in London from May 23 to 29, and is to be followed by municipal excursions and tours both in and around London and in various parts of England, Wales and Scotland for some two or three weeks after the Congress itself.

These Congresses form a portion of the activities of the International Union of Local Authorities whose central office is at Brussels, its president being Senator Wibaut of Holland, and its director Senator Vinck of Belgium. The International Union was established in 1913, when the first Congress was held at Ghent. The second Congress took place at Amsterdam in 1924, the third at Paris in 1925, and the fourth at Seville and Barcelona in 1929. The outcome of these Congresses has been a number of volumes containing contributions from the many affiliated countries, affording valuable information as to local government law and practice in various spheres.

Indications are that the American delegation to the fifth Congress will be larger than has heretofore attended any such meeting abroad. The S. S. *Lapland* of the Red Star Line has been selected as the official ship for the delegation. The *Lapland* sails from New York on Friday, May 13, and the delegates will be in London eight days later. Delegates are guaranteed an outside stateroom on B deck at the minimum rate of $147.50 per passenger, counting not more than two persons per cabin. If the delegation numbers more than twenty-five persons, including members of families of delegates, a further reduction will be granted.

Persons interested in making the trip may communicate with Dr. Luther Gulick, Institute of Public Administration, 302 East 35th Street, New York.

Two questions only will be debated at the Congress, (1) the practical working of local authorities and (2) the recruitment and training of local government officials. Papers on these subjects have been received from 31 countries. These will be published in three languages (English, French and German) and distributed to delegates before the Congress, together with a general report on each question, coördinating and commenting upon the information contained in the national reports. At the discussions on these papers it is proposed to arrange for simultaneous translations of the speeches by microphonic apparatus as carried out at meetings of the League of Nations at Geneva.

It is to be noted that overseas visitors are not invited to take part in the examination of the dry bones of a system but, after having discussed certain questions of vital interest in the Congress itself, to proceed to study a living organism in those aspects which most appeal to them. With this end in view, tours in and around London have been arranged to cover such subjects, among others, as Public Health Administration, Sanitary Engineering, Schools, Police, Fire Brigades, Libraries, Public Baths, Parks, Public Assistance, Town Planning and Housing.

During the week in London there will be opportunities of seeing some of the many activities of the London County Council, the ancient historic institutions of the city, the working of the 28 metropolitan boroughs, the administration of the docks by the Port of London Authority, the transport system of London, the fire brigade service and many other subjects of municipal concern. Although the conference itself is to be held in London, visits will by no means be confined to the capital. On one of the days of the London week there will be a choice of excursions to such places as Brighton, Canterbury, Hastings, Oxford and Windsor, while those interested in the layout of towns will no doubt choose the

excursion arranged to the garden cities of Letchworth and Welwyn.

During the week following the London conference a series of eight tours has been arranged to various parts of England. At each place opportunity will be given to see some section of the machinery of local government functioning according to the needs of the particular locality, as well as to visit the salient objects of historical and civic interest.

✽

Rochester's Municipal Credit Plan.—A proposal of Mayor Owen of the city of Rochester for a municipal credit plan, introduced in the state senate on February 11, has caused considerable comment in financial and governmental circles. As stated in section 1 of the bill, its purpose is for the alleviation of an emergency created by a strained economic depression. It is well-known that the credit of municipalities generally, is strained as a result of increased expenditures for welfare purposes, paralleled by a marked decrease in the value of taxable property. The buyers of municipal securities look askance upon the balance sheets of cities. It is becoming increasingly difficult for municipalities to float loans for the conduct of their current business because of this loss of faith in municipal credit. Back of this proposal is the feeling that the financial structure of municipalities and the state must undergo revision if government is to become increasingly socialized.

Mayor Owen's proposal is that a state agency be created by the legislature to be known as "The public credit and sinking fund corporation of the State of New York." This corporation shall have the power "to invest in, purchase and sell, obligations of the State and obligations of any municipal corporation or public district or agency of the State" with limitations. After April 1, 1933, no obligations maturing subsequent to April 1, 1938 shall be purchased. All municipal securities shall yield five per cent at maturity. The above provisions indicate that the bill was designed primarily as a temporary expedient and not in any sense as a permanent solution. The total amount of securities which the state corporation can hold at any one time is $40,000,000. Any one agency may float obligations through the state corporation in an amount not to exceed two per cent on the assessed valuation of the real estate subject to taxation. No one agency shall be able to float securities to exceed thirty per cent of the total of such securities held by the corporation. There is ample provision in the bill to guarantee the securities issued by the corporation. Of extreme interest and importance is the fact that any agency, in order to secure the consent of the corporation to purchase obligations issued by it (the agency) may make changes or reductions in its budget at any time, including a revision of its salary schedule. This smacks of state control over municipal expenditures.

Fundamentally, it was the purpose of the bill to make it possible for municipalities of the state to use the city's credit in floating certain of their obligations, primarily those for welfare purposes, at a time when municipal credit is impaired.

The bill did not pass the legislature.

ALFRED GATES.

Rochester Bureau of Municipal Research.

✽

Special Taxes for Local Unemployment Relief in Wisconsin.—Between six and seven million dollars will be raised by special taxes for expenditure by cities, villages, towns and counties for unemployment relief as a result of a law enacted by the Wisconsin legislature in January after a ten weeks' deadlock. A similar bill providing five million dollars narrowly failed of passage in June through lack of administration support.

Because of optional alternate methods of poor relief in Wisconsin, by counties or by cities, villages and towns, the law appropriates to the local unit administering relief. The emergency board (governor and chairmen of the legislative finance committees) will release funds only to the extent of receipts from the special taxes.

An initial sum of one dollar per capita was paid to the local units late in February. A second payment of one-quarter the amount spent by local units for relief in 1931 will be payable after the necessary information is gathered by the industrial commission, and the funds are released. "Relief expenditures" not only include direct relief, but also so much of the labor costs of public works undertaken to provide employment as the industrial commission finds represented the equivalent of public relief.

After deducting administration costs and $500,000 for forest fire protection work to provide employment, and $250,000 for distribution to local units not adequately aided by the law, the balance raised by the special taxes will be distributed to the local units in the proportion which their relief expenditures for 1931 bore to

the total expenditures throughout the state. This last allotment may be made at times and in amounts as the emergency board shall direct, presumably to protect the general fund of the state.

No specifications as to expenditures by local units are imposed, except that money remaining at the end of 1933 shall be used for reducing local general property taxes.

It is estimated that over $6,000,000 of the revenue will be raised by a surtax on 1931 incomes of individuals. This surtax is imposed at rates equal to the normal tax, except that no corporation dividends will be deductible, nor will capital gains be taxable or capital losses deductible. The exemption for dependent children is slightly increased.

The sum of approximately $200,000 will be raised in both 1932 and 1933 from a temporary tax on chain stores, the maximum being fifty dollars per annum per store for more than twenty.

FREDERICK N. MACMILLIN.

✻

Glendale's Public Utility Tax for Unemployment Relief.—Glendale, California, by action of its city council, is levying a 10 per cent tax on public utilities for unemployment relief. The January bills of the public service department are the first to request the relief donation.

This method of raising funds for charity was discussed by the civic bodies and leading citizens of the community, and received endorsement by the Chamber of Commerce directors. It was finally resorted to because the relief committee found that all other sources failed to bring in sufficient revenue. It operates in addition to the schemes previously used to aid unemployment.

The tax is based on the total of the light and water bill. The amount for unemployment relief is set out separately from the other figures, and then included in the grand total. The tax is purely voluntary, and any person who does not wish to make the offering has the privilege of crossing off that part of the bill.

With approximately 20,000 homes and apartments in the city receiving water and light service, and an average levy of 50 cents a month on each consumer, the public utility tax is expected to yield $10,000 monthly.

An emergency measure, the plan is looked upon as a "fair and equitable" one which does not impose "any great burden on any particular class." Furthermore, payment of the tax is optional with the consumer.

The raise in rates is therefore not a legal action, but the decision of the council has made the public service department under the direction of the city manager a collection agency for the 10 per cent contribution. As fast as the money is received, it is turned over to the special Chamber of Commerce relief committee.

This method simplifies the collection of a relief fund. It eliminates the extra cost of hiring solicitors to make a canvass of the city. It gives assurance to the people that their contributions become a matter of record and that all of the money thus obtained goes to the city's committee in charge of unemployment relief.

Furthermore, the action is in line with the national program to create more public work. The automatic means of collection makes the money available at once, and immediately puts a large force of the unemployed to work. The value for the money is returned to the public in the form of street improvements and better protection from hill fires. None of the fund is given out as a dole.

The public utility tax, conceived as the only feasible means available for raising the money needed for unemployment relief in Glendale, will be continued until the council orders it taken off the bills.

FRANCES N. AHL.

✻

Public School Finance in South Carolina.—Some definite plan for the retirement of the state deficit of $5,000,000 within a specific time and a balanced budget were necessary when the South Carolina general assembly convened in January. There was no sale for bonds and no credit was available until the deficit was refinanced. Reduction of state appropriations appeared to be the only answer.

The protest against taxes has seldom been so general, so determined. Something in the nature of a political revolution was made articulate through the organization of the Farmers' and Taxpayers' League, which serves as a rallying center and operates through its units in each of the forty-six counties of the state.

The largest single item in the annual appropriation, of course, is in support of the public school system. Here the League found its greatest yield for immediate "economy."

To this end the League is adopting whatever means may seem to promise an opening wedge in the "6–0–1 Law" which was enacted in 1924, to equalize cost and apportionments for the

several counties. A three-mill constitutional tax and a four-mill statutory levy for school purposes are spent in each county where they originate. If these seven mills raise insufficient funds to pay minimum salaries of ninety dollars a month for six months, the state agreed to supplement the amount—provided, the district would guarantee an additional month.

For 1931, the state appropriated $3,500,000 under this law. For 1932, the League would reduce this figure by $2,000,000, which represents the amount of revenue collected last year under the five-mill state property levy. Failing in this, the second proposal of this organization was the removal of the four-mill ad valorem tax assessed in each of the counties as indicated above. Either would practically wreck the schools, particularly the rural schools. Neither is likely to be carried out.

However, it is very necessary that the 6–0–1 Law be amended. Sufficient revenue is not in sight to meet its provisions. Indeed, the amount appropriated last year was insufficient to meet the schedule, and many teachers have not been paid in full for months.

To meet the amount now due on the contracts, the League suggests that the state issue to the teachers its notes. What will probably happen is that the minimum salary schedule will be reduced about ten per cent. It is estimated that this would save the state $350,000 under the 6–0–1 appropriation, and effect a reduction of over a million dollars to the taxpayers in the district school tax. Incidentally, it would enable payment of the approximately two million dollars in back salaries now due the teachers.

James K. Coleman.

*

Voting Machines in Pennsylvania.—Voting machines were used in nearly one-third of the counties of Pennsylvania in the November election, 1931. The constitutional amendment passed at the general election, November, 1928, permitted a local option law giving any county, city, borough or township the right to adopt voting machines.

Some of the organizations that advocated voting machines and worked for the constitutional amendment and the voting machine law are the Pennsylvania League of Women Voters, the Pennsylvania Elections Association, the Chamber of Commerce, the State Federation of Pennsylvania Women, the Women's Christian Temperance Union, the Pennsylvania Council of Republican Women, the Republican Women of Pennsylvania, and the Pennsylvania Federation of Democratic Women. Service clubs, patriotic organizations, religious, civic and political groups have coöperated in local communities to secure voting machines.

In Scranton the Chamber of Commerce and the League of Women Voters led the campaign and machines were adopted not only in Scranton and Carbondale but throughout Lackawanna County, it being the first county in Pennsylvania to be fully equipped. A number of other cities employed them also.

In the city and county of Philadelphia, voting machines were used in the first twenty-two wards. The electors adopted voting machines by a three and a half to one vote, in November, 1929, and appropriated $2,000,000 to pay for them. The county commissioners had bought fifty voting machines and installed machines in the thirty-one election divisions of the First Ward in the spring of 1930. Later in the year they purchased five hundred machines. Delaying, again and again, to award further contracts, late in the summer of 1931, they finally ordered two hundred more machines, which were delivered in time for the November election. As the bonds had been sold and the money was available it was expected that the commissioners would provide a sufficient number of machines for all of the forty-eight wards of the city.

Early in January, the secretary of the Commonwealth, acting in accordance with the voting machine law, advertised for bids and contracted with the Automatic Voting Machine Corporation for eight hundred machines for Philadelphia, to be delivered April 1. The commissioners of Philadelphia instituted injunction proceedings which were dismissed in the Dauphin County Court but the Supreme Court ordered a stay of all proceedings until the constitutionality of the law should be established. In all of the counties mentioned these machines functioned well. They are of the same type used in New York State for more than thirty-four years and in Connecticut, Indiana, Iowa, California and other states for many years.

In Allegheny, Schuylkill and Northumberland Counties the American voting machine was used but complaints have been made that it did not give satisfaction. After a reëxamination of these machines, the secretary of the Commonwealth ordered them returned to the factory of the Poole Engineering and Machine Company of

Baltimore to be made to conform with the law. A receiver has been appointed for the company and it is not likely that any of the machines will be used at the coming election. A third machine has been offered for sale by the Shoup Voting Machine Corporation and to be manufactured by the Berger Manufacturing Company of Canton, Ohio. The Adriance Machine Works, Inc., of Brooklyn, New York, has served notice that it has exclusive rights to manufacture and sell the Shoup voting machine for five years.

MRS. F. J. GIERING.

✻

Northwestern University Conference on Police Problems and Methods.—Northwestern University, in coöperation with the Evanston police department, held a four-day conference on police problems and methods at Evanston, February 15–18. More than two hundred police officials, generally from Illinois and Indiana, were in attendance. Speakers included Dr. Arthur J. Todd, professor of sociology, Northwestern University; Professor Leonard D. White, University of Chicago; Honorable C. Wayland Brookes, assistant state's attorney of Cook County; and Professor Andrew A. Bruce of Northwestern University law school. Sectional meetings were held on each day covering technical subjects such as target practice, wrestling, accident reporting and analysis of records and reports. The general sessions were equally divided between two fields, police protection through preventive measures, and crime detection.

The conference was voted such a success that it will undoubtedly be an annual affair. Professor A. R. Hatton presided at all the general sessions.

✻

New Jersey Proposal to Pool Municipal Credit.—Governor Moore's tax finance commission as an outlet for municipal tax bonds and notes is opposed by Senator Arthur N. Pierson, the author of the famous municipal bond and budget laws of New Jersey. Senator Pierson argues that the ultimate resting place of municipal issues which the finance corporation would take over would be the same market to which municipalities are now obliged to look for relief. Should the corporation issue its own obligations, supported by obligations of municipalities, it could at best afford only a small fraction of the relief necessary. Unless given more capital than could possibly be appropriated for the purpose its operation would strain the state's credit and would not be worth the effort.

Such an adventure would be equivalent to putting salve on a cancer when a major operation is the only cure, declares Mr. Pierson. The major operation necessary is the cutting down of tax bills and the setting of the municipal house in order.

✻

Texas has organized a joint legislative committee on organization and economy. A comprehensive study of the organization of the state government as a whole, and of the departments, institutions and agencies in particular, has been begun. Representative H. N. Graves is chairman of the committee. Griffenhagen and Associates have been retained as consultants and directors of the research staff.